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Canines at the Company, Felines at the Factory: The Risks and Rewards of Incorporating Service Animals and Companion Animals into the Workplace

Rebecca J. Huss

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Canines at the Company, Felines at the Factory: The Risks and Rewards of Incorporating Service Animals and Companion Animals into the Workplace

Rebecca J. Huss*

ABSTRACT

With unemployment rates at historically low levels, the ability of an employer to attract and retain productive employees is key to a company’s success. Simultaneously, the percentage of persons in the United States with disabilities is increasing. Additionally, many persons without disabilities consider allowing companion animals at work a valuable employee benefit. This Article focuses on the legal and workplace implications of incorporating service animals and companion animals at work.

This Article begins by analyzing when an employer must accommodate a request by an employee with a disability to be accompanied by a service animal at work under the Americans with Disabilities Act. It then reviews recent research on the impact of incorporating companion animals into the workplace on the health and well-being of humans. The Article continues by setting forth concerns raised by employers and then providing ways to mitigate those concerns. It concludes by contemplating options available to employers to assist them in structuring policies that meet employers’ legal requirements and ensuring a productive working environment for all employees.

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INTRODUCTION

With unemployment rates at historically low levels, the ability of an employer to attract and retain productive employees is key to

a company's success.¹ Efficiently utilizing the available labor force benefits both companies and workers.²

According to surveys, the percentage of people in the United States with disabilities is increasing.³ Although the percentage of people with a disability increases with age, over half of the people with disabilities are in the working age group of 18- to 64-years-old ("Working Age Group").⁴ There is a significant gap in employment between people without disabilities and people with disabilities, and this gap appears to be widening.⁵

The percentage of people with disabilities in the Working Age Group who live in the community with employment is estimated to be 34.9 percent.⁶ Even if employed, the median earnings of people

1. U.S. DEP'T OF LABOR, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY, <https://bit.ly/2ibnFLh> [<https://perma.cc/9XGC-2LS9>] (illustrating the generally decreasing unemployment rate since it hit a high of ten percent in 2009); Natalie Kitroeff, *Unemployment Rate Hits 3.9%, a Rare Low as Job Market Becomes More Competitive*, N.Y. TIMES (May 4, 2018), <https://nyti.ms/2HV4LWi> [<https://perma.cc/97EN-UVPC>] (reporting on the lowest unemployment rate since 2000 and providing historical information about unemployment rates in the United States).

2. THE NAT'L GOVERNORS ASS'N, A BETTER BOTTOM LINE: EMPLOYING PEOPLE WITH DISABILITIES 7, <https://bit.ly/2PEafrO> [<https://perma.cc/8CBU-SXT2>] (reporting on businesses seeking skilled workers and positive aspects of employing persons with disabilities).

3. LEWIS KRAUS, 2016 DISABILITY STATISTICS ANNUAL REPORT 2 (2016), <https://bit.ly/2IngCxc> [<https://perma.cc/W6LN-NTEU>] (reporting that a survey indicated the percentage of people with disabilities in the United States rose from 11.9 percent in 2010 to 12.6 percent in 2015). This survey utilized the categorization to determine disability status used by the U.S. Census Bureau. *Id.* at 38; see also Elizabeth A. Courtney-Long et al., *Prevalence of Disability and Disability Type Among Adults—United States, 2013*, MORBIDITY & MORTALITY WKLY. RPT. (July 31, 2015), <https://bit.ly/2PBLRXE> [<https://perma.cc/W6WR-SRBX>] (reporting 22.2 percent of adults reported a disability in a survey of U.S. households). This is a higher percentage compared to 1998, when researchers began collecting data. *Id.*

4. KRAUS, *supra* note 3, at 2. The rate of disability is 10.5 percent in this group of persons.

5. *Id.* at 2. The employment gap has increased from 38.1 to 41.1 percentage points in the eight years preceding the 2016 report. *Id.*

6. *Id.* at 15. There are variations in the states as to the level of employment for persons with disabilities ranging from only 25.4 percent to 57.1 percent. *Id.* at 2. The type of disability impacts employment rates. *Id.* The percentage of people with various types of disabilities differs based on the age group. For example, only two percent of the U.S. population in the Working Age Group has a hearing disability compared to 14.8 percent of the population age 65 years or older. *Id.* at 12. Similarly, only 1.9 percent of the Working Age Group has a vision disability compared with 6.5 percent of the population age 65 or older. *Id.* The rate of persons in the Working Age Group with an ambulatory disability is 5.1 percent compared to 22.6 percent of persons 65 years or older. *Id.* at 13. The percentage of persons in the Working Age Group with a cognitive disability was 4.5 percent compared with nine percent of persons 65 years or older. *Id.* The percentage of persons in

with disabilities is about two-thirds of the wages of people without disabilities.⁷ People with vision and hearing disabilities have higher rates of employment than people with disabilities categorized as cognitive, ambulatory, self-care, or independent living.⁸

Data suggests an increasing number of people with a variety of disabilities are partnered with service animals to assist them.⁹ Under the Americans with Disabilities Act (ADA), people with disabilities may have a right to bring their service animals to their places of employment.¹⁰ Employers increasingly ask questions

the Working Age Group with a self-care disability was 1.9 percent compared to 8.2 percent of persons 65 years or older. *Id.* at 14. The percentage of persons in the Working Age Group with an independent living disability was 3.7 percent compared to 14.9 percent of persons age 65 years or older. *Id.*

7. *Id.* at 19. The recent trend is for an increasing disparity in the earnings. *Id.* Given these statistics, it is not surprising that a higher percentage of persons with disabilities live in poverty compared to people without disabilities. *Id.* at 23. The percentage of all persons in poverty went up beginning in 2009 through 2011 and 2012 and dropped through 2015. *Id.*

8. *Id.* at 3. The rates of employment by disability include vision (41.8 percent), hearing (51 percent), cognitive (25.5 percent), ambulatory (24.1 percent), self-care (15.6 percent), and independent living (16.4 percent). *Id.* at 18. Generally, a person classified as “disabled” must show “serious difficulty” in a particular area. *Id.* at 38–40. For example, a person may be classified with a cognitive disability if he or she “indicated ‘yes’ when asked if due to a physical, mental, or emotional condition, they had ‘serious difficulty concentrating, remembering, or making decisions’” and an ambulatory disability if they had “‘serious difficulty walking or climbing stairs.’” *Id.* at 38.

9. CAL. SENATE BUS., PROFESSIONS & ECON. DEV. COMM., FAKE SERVICE DOGS, REAL PROBLEM OR NOT?: HEARING ON THE POSSIBLE USE OF FAKE SERVICE DOGS AND FAKE IDENTIFICATION BY INDIVIDUALS TO OBTAIN SPECIAL ACCESS TO HOUSING, PUBLIC PLACES OR AIRPORTS/AIRLINES FOR THEIR ANIMAL BACKGROUND PAPER 7 (2014), <https://bit.ly/2EqLbDt> [<https://perma.cc/SYE4-B89V>] (estimating the number of task-trained service dogs to be between 100,000 and 200,000); Margaret Glenn, *Does the Purpose for Using a Service Dog Make a Difference in the Perceptions of What It Takes to Create Successful Outcomes in the Workplace?*, J. APPLIED REHABILITATION COUNSELING, Summer 2015, at 13, 13, 15 (discussing elements deemed important for a successful service animal partnership in the workplace and the questions arising from new ways that service animals are assisting persons with disabilities); Beth Teitell, *Service Dogs Barred, Doubted, and Deeply Treasured*, BOS. GLOBE (Sept. 18, 2013), <https://bit.ly/2iupxkD> [<https://perma.cc/V2J3-DA4R>] (discussing the increasing number of persons with less apparent disabilities being partnered with service animals); see generally Mariko Yamamoto et al., *Registrations of Assistance Dogs in California for Identification Tags: 1999–2012*, 10 PLOS ONE, no. 8, Aug. 2015, at 1, <https://bit.ly/2S18ffe> [<https://perma.cc/Y9TR-QBEM>] (reporting on the increase in the number of service dogs, including dogs providing assistance for psychiatric conditions, registered in California).

10. See *infra* notes 35–139 and accompanying text (analyzing employers’ obligations under the ADA).

about their obligation to allow employees to be accompanied by service animals.¹¹

In contrast to service animals who provide aid to individuals with disabilities, *companion animals* can be defined as animals “we live with and that have no obvious function.”¹² Companion animal can also be defined as “an animal kept as a pet,” with *pet* defined as “an animal that you keep in your home to give you company and pleasure.”¹³ In this Article, the phrase *service animals* refers only to animals partnered with individuals with disabilities and purporting to aid such persons with their disabilities.¹⁴

Companion animals are an important part of many peoples’ everyday lives, with one survey estimating that two-thirds of households in the United States include a companion animal.¹⁵ Employers may receive requests from people without disabilities for permission to bring their animals to the workplace.¹⁶

11. Linda Carter Batiste, *Service Animal Access vs. Wheelchair Access—Why the Difference?*, JOB ACCOMMODATION NETWORK (Jan. 5, 2017), <https://bit.ly/2UG0IUx> [<https://perma.cc/F97K-4E3L>] (reporting that the Job Accommodation Network is getting “more and more questions about service animals in the workplace, both from employers and people with disabilities who use service animals”). The Job Accommodation Network is funded by a contract with the U.S. Department of Labor’s Office of Disability Employment Policy. *About JAN*, JOB ACCOMMODATION NETWORK, <https://bit.ly/2QqpA4c> [<https://perma.cc/FTA3-YMLK>]. The EEOC lists the Job Accommodation Network as a resource for information on reasonable accommodations. See, e.g., U.S. EQUAL EMP’T OPPORTUNITY COMM’N, ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UN-DUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT (2002) [hereinafter EEOC ENFORCEMENT GUIDANCE], <https://bit.ly/2GU8AeW> [<https://perma.cc/9MDU-5MTQ>].

12. Catherine Amiot et al., *People and Companion Animals: It Takes Two to Tango*, 66 *BIO SCIENCE* 552, 552 (2016), <https://bit.ly/2C7Ln7Y> [<https://perma.cc/7JXW-D6EJ>] (defining companion animals and pets).

13. *Companion Animal*, COLLINS DICTIONARY.COM, <https://bit.ly/2Lkyo6d> [<https://perma.cc/T2GA-QQ8V>]; *Pet*, COLLINS DICTIONARY.COM, <https://bit.ly/2Eu8XOV> [<https://perma.cc/4RTV-VT7M>].

14. See *infra* notes 47–78 and accompanying text (defining service animal). Although an animal may meet the definition of service animal, such animal also may be considered, at least at times, a companion animal to an individual with a disability.

15. *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASS’N, <https://bit.ly/2bmXZYP> [<https://perma.cc/DD4M-UCS9>] (citing the 2017–2018 American Pet Products Association’s National Pet Owners Survey which estimates 68 percent of households in the United States own a pet). Estimates indicate that those households will spend more than \$70 billion on their companion animals in 2018. Press Release, Am. Pet Prods. Ass’n, *Americans Spent \$69.5 Billion on Their Pets Last Year: More than Ever Before* (Mar. 22, 2018), <https://bit.ly/2LeCiNU> [<https://perma.cc/9YGN-JYCJ>].

16. Kia Kokalitcheva, *Here Are the 12 Most Pet-Friendly Companies*, *FOR-TUNE* (Mar. 8, 2016), <https://bit.ly/1V9guD4> [<https://perma.cc/P847-B5EC>] (discussing companies that allow their employees to bring their companion animals to

Employers establish the terms and conditions of employment, including whether employees can be accompanied by their companion animals at the workplace.¹⁷ Reports about animal-friendly companies highlight the idea that bringing a companion animal to work is considered a valuable employee benefit.¹⁸ It may seem logical for a business dealing with issues involving animals to have an animal-friendly workplace.¹⁹ However, companies representing a variety of industries allow companion animals on their premises.²⁰

In a 2016 survey by Banfield Pet Hospital (“Banfield Survey”), one in five respondents in an office environment reported their companies allowed animals in their workplaces.²¹ However, only

work). Note, this Article generally employs the term “companion animal”; however, if referencing material that has used the term “pet,” it may utilize that term. Similarly, the term “owner” reflects the current legal status of animals, as opposed to a guardian or another non-legal term. *See infra* notes 261–70 and accompanying text (providing a limited discussion of ethical and philosophical issues relating to companion animals including their current legal status).

17. RESTATEMENT OF EMPLOYMENT LAW § 1.01(a)(3) (AM. LAW INST. 2015) (setting forth that the “employer controls the manner and means by which the individual renders services”).

18. Kokalitcheva, *supra* note 16 (discussing companies with “creative perks and policies for pets”).

19. *See, e.g., What Does Responsible Dog Ownership Mean to You?*, MICHELSON FOUND ANIMALS, <https://bit.ly/2UIpDHP> [<https://perma.cc/HU7M-WVGN>] (listing requirements for “office dogs” at the animal-friendly workplace, including that the animals be spayed or neutered). At the Found Animals Foundation, in addition to dogs, cats occasionally are brought to the office. *Id.*

20. *See, e.g., Laura Coffey, Rising from the Ashes, Former Shelter Dog Helps Firefighters Cope with Stress and Grief*, BEST FRIENDS MAG., May/June 2018, at 39 (reporting on the adoption of a dog who has “work shifts” at a firehouse); Samantha Joseph, *Ruff Day: Attorneys Rely on Pets at Law Firms to Bring Cheer to High-Stress Profession*, DAILY BUS. REV. (June 13, 2018), <https://bit.ly/2tcEgX6> [<https://perma.cc/NL5J-C8Y3>] (describing how some law firms allow pets at the office and stating, “[a]ttorneys say they make no additional provision for liability, beyond considering allergies, paying attention to the animals’ demeanor, keeping aggressive pets out of the office and notifying visitors of their presence”); Kokalitcheva, *supra* note 16 (discussing companies in a variety of industries that allow companion animals); Dave Stafford, *Canine Companions Bring Touch of Home to the Workplace*, IND. LAW. (May 21, 2014), <https://bit.ly/2SLqIfI> [<https://perma.cc/34B7-MPZR>] (reporting on companion animals at attorneys’ offices).

21. BANFIELD PET HOSPITAL, PET-FRIENDLY WORKPLACE PAWROMETER 3 (2016) [hereinafter BANFIELD], <https://bit.ly/2zTJmuU> [<https://perma.cc/TKW5-3E4B>]. Survey respondents needed to be over 18 years of age and work at least three days per week in an office environment. *Id.* at 4. This percentage is consistent with a survey conducted by the American Pet Products Association in 2006. Press Release, Am. Pet Prods. Ass’n, Nearly One in Five Companies Allows Pets in the Workplace According to New Survey (June 13, 2006) [hereinafter APPA, Work], <https://bit.ly/2Gf7mxV> [<https://perma.cc/3SP9-D8GX>]. Other resources indicate a much lower level of acceptance of animals in the office. For example, the Society for Human Resources Management reports only seven percent of employers permitted pets in the workplace in 2016. Lisa Rabasca Roepe, *How to Be a*

13 percent of respondents reported that their companies had adopted a formal policy.²² The Banfield Survey found dogs are more likely than cats to be allowed in pet-friendly workplaces.²³ In addition, the Banfield Survey found a majority of pet-friendly offices allow animals at any time.²⁴ Not every employee has a pet or would take advantage of a policy; the Banfield Survey found that at a majority of workplaces with policies, less than half of the employees brought an animal to work.²⁵ Further, a pet-friendly workplace may both reduce stress and improve employees' sense of well-being.²⁶ Unsurprisingly, there is also a perception that a pet-friendly workplace allows employees to work longer hours.²⁷ The Banfield Survey found that a pet-friendly workplace was more likely to attract and retain talent.²⁸

This Article considers various issues that arise when service animals or companion animals are allowed in a workplace.²⁹ Part I of this Article analyzes whether federal law requires an employer to accommodate a request by an employee with a disability to bring a

Pet-Friendly Employer, SOC'Y FOR HUM. RESOURCES MGMT. (Feb. 22, 2017), <https://bit.ly/2GfT4gN> [<https://perma.cc/46MX-79UN>]. A Swedish survey found 28 percent of persons who had dogs reported that dogs were allowed at their workplace. Anna-Yezica Norling & Linda Keeling, *Owning a Dog and Working: A Telephone Survey of Dog Owners and Employers in Sweden*, 23 *ANTHROZOÖS* 157, 168 (2010). This Swedish survey also indicated larger employers were less likely to allow dogs in the workplace. *Id.* at 164.

22. BANFIELD, *supra* note 21, at 3. Thirteen percent of human resources decision-makers reported on the lack of a policy with nine percent of employees reporting the same. *Id.*; *see also infra* notes 164–255 and accompanying text (discussing concerns of employers).

23. BANFIELD, *supra* note 21, at 4 (reporting that more than 95 percent of workplaces allowed dogs compared to 46 percent of employees and 65 percent of human resources decision-makers reporting their workplace allowed cats).

24. *Id.* Twenty percent of workplaces only allow animals during specified days and times. *Id.* A minority of workplaces only allow pets during non-business hours. *Id.*

25. *Id.*

26. *Id.* at 2. There is also a perception that such a workplace reduces guilt about leaving pets at home. *Id.*

27. *Id.*; *see also* APPA, Work, *supra* note 21 (reporting on survey indicating people who brought their companion animals to the workplace work longer hours).

28. BANFIELD, *supra* note 21, at 2. Potential candidates at pet-friendly companies often inquire about such policies, and human resources decision-makers discuss the use of such policies to boost recruitment. *Id.*

29. The scope of this Article is limited to issues relating to service animals and companion animals brought to the premises by employees. It does not cover situations where employers allow animal-assisted interventions for employees intended to provide possible relief of stress or for therapeutic purposes. *See, e.g., Workplace Well-Being*, PET PARTNERS, <https://bit.ly/2zRVMDm> [<https://perma.cc/6TCT-Y755>] (describing a program where therapy animal teams visit work sites); Roepe, *supra* note 21 (providing the alternative of scheduling animal therapy days).

service animal to work.³⁰ Part II reviews some of the research on the impact of incorporating companion animals in the workplace on the health and well-being of humans.³¹ Part III sets forth concerns raised by employers, including the possibility of legal liability due to injuries as well as the risk of transmission of zoonotic pathogens.³² Part IV provides ways for employers to mitigate risks focusing on both attributes of the animals and the responsibilities associated with the animals that could be assigned to the humans on the premises.³³ The Article concludes by considering options available to employers.³⁴

I. AMERICANS WITH DISABILITIES ACT³⁵

The general purpose of the ADA is to protect a person with a

30. See *infra* notes 35–139 and accompanying text (analyzing guidance and cases involving service animals in the workplace under the ADA).

31. See *infra* notes 140–63 and accompanying text (reviewing research on the impact of animals in the workplace on human health and well-being).

32. See *infra* notes 164–255 and accompanying text (considering concerns about risks).

33. See *infra* notes 256–354 and accompanying text (providing ways to reduce risks).

34. See *infra* notes 355–66 and accompanying text (offering options for employers).

35. 42 U.S.C. §§ 12101–12213 (2018). States also have laws addressing employment discrimination. See JOHN PARRY, EQUAL EMPLOYMENT OF PERSONS WITH DISABILITIES FEDERAL AND STATE LAW, ACCOMMODATIONS, AND DIVERSITY BEST PRACTICES § 4.03 (2011) (discussing how many state statutes model, in some measure, on the ADA); see generally, *Moore v. Pet Supermarket, Inc.*, No. 2:13-cv-1478 DAD, 2014 WL 6634224 (E.D. Cal. Nov. 21, 2014) (providing an example of a case involving an employee with a service animal brought under California law). Although a discussion of state law is beyond the scope of this Article, state court cases may be illustrative given a court may consider interpretations of federal law as persuasive authority when interpreting state law provisions. See, e.g., *McDonald v. Dep’t of Env’tl. Quality*, 2009 MT 209, ¶ 39 n.4, 351 Mont. 243, ¶ 39 n.4, 214 P.3d 749, ¶ 39 n.4 (considering the ADA as persuasive authority in a case interpreting Montana disability law and remanding to the lower court to determine whether the employer violated the state law in connection with its response to requests regarding modifications in the working environment that would have allowed the employee to use her service animal effectively in the workplace). The *McDonald* court rejected the employer’s argument—that it satisfied its duty to the employee by allowing her to bring the service animal to the workplace—stating the duty “requires the employer to address any barriers to the employee’s ability to actually use that device effectively in the workplace.” *Id.* ¶ 64. The request in the *McDonald* case was to modify the floor surface so the service animal would not slip. *Id.* ¶¶ 14–28, 63–64. State laws relating to employment may impact other ADA issues. See *Riggs v. Bennett Cty. Hosp. & Nursing Home*, 2018 SD 51, 915 N.W.2d 156 (analyzing a case involving a claim that an employer’s opposition to an unemployment compensation claim was in retaliation, in violation of the ADA, for the employee’s prior request to bring her dog to work to assist in management of symptoms relating to depression and post-traumatic stress disorder).

disability from discrimination based on his or her disability.³⁶ Title I of the ADA addresses discrimination of private sector employees with disabilities as well as state and local governments.³⁷ The De-

36. 42 U.S.C. § 12101. The statute defines disability as “with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual.” *Id.* § 12102(1). Individuals “being regarded as having such an impairment” or with “a record of such impairment” are included in that definition. *Id.* The term “major life activities” is defined as including, but “not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” *Id.* § 12102(2). This Article refers to the ADA as those laws as amended by the ADA Amendments Act of 2008. *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553; *see also* *Doers v. Lincare, Inc.*, No. 8:14-cv-3168-T-30AEP, 2016 WL 853102, at *5 (M.D. Fla. Mar. 4, 2016) (discussing the definition of disability in a case where a woman with an anxiety and panic disorder utilizing a therapy animal sued under the ADA after her employer terminated her from her job).

37. 42 U.S.C. §§ 12111–12117; *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 364 (2001). The law restricts the ability of individuals to recover damages from states, but they may still sue for injunctive relief. *Garrett*, 531 U.S. at 374. In addition to employers, covered entities under Title I include employment agencies and labor organizations. 42 U.S.C. § 12111(2). Titles II and III of the ADA relate to access to public entities (state and local) and places of public accommodations, respectively. *See* 42 U.S.C. §§ 12131–12165, 12181–12189. The Rehabilitation Act of 1973 also includes important provisions addressing employment discrimination by the federal government, federal contractors, and federally funded activities and programs. *See* Rehabilitation Act of 1973, 29 U.S.C. §§ 791–796 (2018); *see also* PARRY, *supra* note 35, at 89–92 (discussing the Rehabilitation Act and its application to federal agencies, federal contractors, and federally financed activities and programs); LAURA ROTHSTEIN & JULIA IRZYK, *DISABILITIES AND THE LAW* § 4:3–4:5 (4th ed. 2014) (analyzing relevant Rehabilitation Act provisions). Because this Article focuses on private sector employers, the Rehabilitation Act will not be discussed herein. “Because the Rehabilitation Act provides limited protection in private sector employment, redress for most discrimination by private employers must be sought through the ADA and state laws.” *Id.* § 4:1. For examples of cases involving service animals and federal employees applying the Rehabilitation Act, *see Bonnette v. Shinseki*, 907 F. Supp. 2d 54, 65–66, 79 (D.D.C. 2012) (holding, among other issues, the U.S. Department of Veterans Affairs reasonably accommodated an employee’s need for a service dog, despite a single incident of insensitivity); *Edwards v. U.S. Envtl. Prot. Agency*, 456 F. Supp. 2d 72, 97–102 (D.D.C. 2006) (holding employee did not meet the burden of proving the proposed accommodation of bringing his untrained dog to work was reasonable); *Branson v. West*, No. 97 C3538, 1999 WL 1186420 (N.D. Ill. Dec. 10, 1999) (providing a permanent injunction to ensure a physician who worked at a Department of Veterans Affairs hospital was able to be accompanied by her service dog at the facility). Cases interpreting the ADA and Rehabilitation Act have used case law contemplating the other statute as guidance. *See* HENRY H. PERRITT, JR., *AMERICANS WITH DISABILITIES ACT HANDBOOK* § 1.02 (5th ed. 2018). Readers should note possible rights under the Rehabilitation Act, which are not included in the ADA. *See* PARRY, *supra* note 35, § 7.01(a)(iv) (discussing the issue of application of the Rehabilitation Act’s § 504 in circumstances where the ADA might not provide protection); ROTHSTEIN & IRZYK, *supra* note 37, § 4:6 (discussing differences between the ADA and Rehabilitation Act and the possibility of coverage in specific factual settings).

partment of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) share jurisdiction over employment discrimination claims under the ADA.³⁸

Title I of the ADA covers private employers with 15 or more employees.³⁹ Under Title I, employers must provide ADA accommodations only if the person with the disability is a *qualified individual*, which is defined as “an individual who, *with or without reasonable accommodation*, can perform the essential functions of the employment position that such individual holds or desires.”⁴⁰

The ADA regulations define *qualified* individuals as those who “satisf[y] the requisite skill, experience, education and other job-

38. 42 U.S.C. § 12111; *see also* ROTHSTEIN & IRZYK, *supra* note 37, § 4:26 (discussing the enforcement of the ADA provisions relating to employment); *Fighting Discrimination in Employment Under the ADA*, ADA.GOV, <https://bit.ly/2BdNbux> [<https://perma.cc/EN7H-KJF3>] (discussing the shared jurisdiction over issues regarding Title I of the ADA with complaints alleging discrimination needing to be filed with the EEOC, the DOJ bringing suits against state and local government employers, and the EEOC bringing suits against private employers). A discussion of enforcement and remedies of these claims is beyond the scope of this Article; however, private parties must exhaust administrative remedies prior to filing claims under Title I of the ADA. ROTHSTEIN & IRZYK, *supra* note 37. The EEOC may also bring an action against an employer. *See generally* Equal Emp’t Opportunity Comm’n v. Autozone, Inc., No. CV-06-1767-PCT-PGR, 2008 WL 4418160 (D. Ariz. Sept. 29, 2008) (providing an example of a case brought by the EEOC against a company for violation of the ADA for failure to reasonably accommodate an employee with a visual impairment who used a guide dog). Employers may also require employees to execute contracts mandating the use of arbitration. PARRY, *supra* note 35, § 10.02 (discussing increasing use of arbitration); *see, e.g.*, Theroff v. Dollar Tree Stores, Inc., No. WD80812, 2018 WL 1914851, at *1, *4 (Mo. Ct. App. Apr. 24, 2018) (upholding trial court ruling denying an employer’s motion to compel arbitration in a case where an employee with a visual impairment alleged the employer denied her request to be accompanied by her service animal as a reasonable accommodation).

39. 42 U.S.C. § 12111(5) (setting forth the definition of “employer”); *see also* PARRY, *supra* note 35, § 7.01(b)(ii) (discussing coverage of Title I, including defining who qualify as employees, and the exclusion of some employees of churches from protection under Title I); *see, e.g.*, Cook v. Farmers Ins. Exch., No. 1:06cv-1536-RLY-TAB, 2008 WL 4690985, at *1, *5 (S.D. Ind. Oct. 21, 2008) (adopting the magistrate judge’s Report and Recommendation finding and listing factors establishing status as employee or independent contractor). The *Cook* case dealt with an individual alleging a company “failed to provide her with a reasonable accommodation regarding her service dog,” but because the court found the plaintiff to be an independent contractor rather than employee, she did not have standing to sue under the ADA. *Id.* at *7.

40. 42 U.S.C. § 12111(8) (emphasis added). The covered entities may not “discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” *Id.* § 12112(a).

related requirements of the employment position.”⁴¹ *Reasonable accommodation* includes making modifications to the work environment or facilities so individuals with disabilities can access or use them.⁴² An “informal, interactive” process initiated by the employer with the qualified individual may be necessary to determine an appropriate reasonable accommodation.⁴³ However, employers are not required to provide a reasonable accommodation if it would create an “undue hardship” for the employer.⁴⁴ In addition, EEOC guidance provides:

[I]f more than one . . . accommodation will enable the individual to perform the essential functions . . . the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations and may choose the . . . accommodation that is easier for it to provide.⁴⁵

Although making workplace modifications implicate numerous issues for people with disabilities, this Article focuses on selected administrative guidance and cases specifically addressing service animals.⁴⁶

41. 29 C.F.R. § 1630.2(m) (2018). The term *essential functions* is further defined as the “fundamental job duties of the employment position,” and evidence of whether a particular function is essential includes the employer’s judgment as well as written job descriptions prepared before advertising for a job. *Id.* § 1630.2(n).

42. *Id.* § 1630.2(o).

43. *Id.* § 1630.2(o)(3). Compare the interactive process under Title I with the limitation on inquiries that Title II and Title III entities are allowed to make. *See id.* §§ 35.136(f), 36.302(c)(6) (allowing entities to only inquire whether “the animal is required because of a disability and what work or task the animal has been trained to perform”). Employers are not required to provide the “best” reasonable accommodation “so long as it is sufficient to meet the job-related needs of the individual being accommodated.” *Id.* pt. 1630 app. § 1630.9.

44. *Id.* §§ 1630.2(o)(4), 1630.9(a). “Undue hardship” is defined as “significant difficulty or expense,” taking into consideration factors including the financial resources of the covered entity and “the impact on the ability of other employees to perform their duties and the impact on the facility’s ability to conduct business.” *Id.* § 1630.2(p). Undue hardship can also occur if an accommodation is disruptive; an employer is not required to fundamentally alter the nature or operation of its business. *Id.* pt. 1630 app. § 1630.2(p).

45. *Id.* pt. 1630 app. § 1630.9.

46. *See generally* EEOC ENFORCEMENT GUIDANCE, *supra* note 11 (clarifying “the rights and responsibilities of employers and individuals regarding reasonable accommodation and undue hardship”); *see, e.g.*, ROTHSTEIN & IRZYK, *supra* note 37, at iii (stating “[e]mployment cases are so numerous that only those of particular interest or significance have been selected for inclusion” in a treatise designed for people involved in legal issues regarding disability discrimination and adding “the volume of decisions on employment issues has not decreased”). This Article discusses cases to illustrate aspects of the issues relevant in situations where em-

A. *Defining Service Animal*

In contrast to the regulations governing Titles II and III of the ADA, Title I and its regulations do not include provisions specifically addressing employers' obligations regarding service animals.⁴⁷ Instead, employers must utilize the applicable process for any employee's request for an accommodation to determine whether it would be reasonable to allow an individual to be accompanied by his or her specific service animal.⁴⁸ There is limited EEOC guidance on service animals, but one EEOC source articulates an em-

ployees have utilized service animals. It does not analyze every case where an employee has requested to be allowed a service animal at work. *See, e.g., Burns v. S.C. Dep't of Transp.*, No. 3:05-3271-SMC-BM, 2006 WL 3791361, at *3-5 (D.S.C. Dec. 22, 2006) (granting employer's motion for summary judgment in a case alleging discrimination against an individual who was visually impaired and who was partnered with a guide dog); *Alonzo-Miranda v. Schlumberger Tech. Corp.*, No. SA-13-CA-1057-OLG (HJB), 2014 WL 12489995, at *4 (W.D. Tex. Nov. 24, 2014) (requesting reasonable accommodation of service animal to prevent or mitigate panic attacks associated with post-traumatic stress disorder).

47. 42 U.S.C. §§ 12111-12117 (2018); 29 C.F.R. § 1630; *see also Equal Employment Opportunity Commission Answers Employers' Most Pressing ADA Questions*, ADA COMPLIANCE GUIDE NEWSL. (Thompson Publ'g Grp., Inc., Washington, D.C.), June 2012, at 3 [hereinafter *EEOC Q&A*] (adapting questions and answers from an audio conference with Joyce Walker-Hones, a senior attorney with the EEOC, and stating the "EEOC has not yet adopted [the Title II and III] guidelines"). Because of the limited written guidance provided by the EEOC, and lack of specific service animal regulation, analyzing published statements by EEOC employees with purported expertise and authority in the EEOC should provide indications as to the EEOC's likely thinking on the topic. The definition of service animal in Title II and Title III is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." 28 C.F.R. § 35.104 (2018); 28 C.F.R. § 36.104 (2018). Entities covered by Titles II and III of the ADA may also be required to make reasonable accommodations to allow for the use of miniature horses as service animals in certain circumstances, although the service animal definition limits the covered species to dogs. 28 C.F.R. § 35.136(i) (2018); 28 C.F.R. § 36.302(c)(9) (2018). The Title II and Title III regulations clarify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of [the definition of service animal]." 28 C.F.R. § 35.104 (2018); 28 C.F.R. § 36.104 (2018); *see also* Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1174-89 (2010) (analyzing the DOJ's rulemaking process regarding the definition of service animals for Titles II and III of the ADA).

48. *See supra* note 43 and accompanying text (setting forth the language in the Title I regulations); *see also* EQUAL EMP'T OPPORTUNITY COMM'N, QUESTIONS & ANSWERS ABOUT BLINDNESS AND VISION IMPAIRMENTS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT (ADA), <https://bit.ly/2cJqVAp> [<https://perma.cc/BT7T-WFQ3>] (providing as an example of a reasonable accommodation "modification of employer policies to allow use of guide dog in the workplace"). Note that the rationale for requiring employees to request the accommodation to allow them to bring service animals to the workplace is based on the idea that most employers have policies not allowing animals in the workplace. Batiste, *supra* note 11. Thus, a modification of the policy would need to be made. *Id.* However, if

ployer's ability to provide an "equally effective" accommodation.⁴⁹ An EEOC representative stated, "If the service animal is not the only effective accommodation, then, like any other accommodation, the employer may provide an alternate accommodation that is equally effective."⁵⁰

Both EEOC guidance and case law address the lack of a clear definition of service animal under the Title I regulations.⁵¹ In response to questions regarding the EEOC's position on service animals, a senior attorney with that agency addressed the lack of a definition and referred back to the issue of the accommodation in the employment context, stating that a service animal "is one that helps an individual with a disability overcome a workplace barrier."⁵² The senior attorney also stated, "there is no bright line between a service animal and an emotional support animal for Title I purposes."⁵³

The filing of a case by the EEOC against a trucking company relating to an employee diagnosed with post-traumatic stress disorder (PTSD) and mood disorders who used an emotional support dog suggests the EEOC may expect employers to allow non-task-trained animals in the workplace as a reasonable accommodation for employees with disabilities.⁵⁴

there is no "no-animal" policy, arguably an employee would not need to make the request. *Id.*

49. *EEOC Q&A*, *supra* note 47.

50. *Id.* That said, another source recommended by the EEOC website cautions employers from choosing another effective accommodation given the personal and medical issues that a service animal may be addressing. Linda Carter Batiste, *Animals in the Workplace*, JOB ACCOMMODATION NETWORK, <https://bit.ly/2GqcHTt> [<https://perma.cc/QX33-HD3K>]; *see also supra* note 11 (setting forth the relationship between the EEOC and Job Accommodation Network).

51. *See infra* notes 47–139 and accompanying text (discussing EEOC guidance and case law). State law may provide a clearer definition to use in these cases. *See, e.g.*, CAL. CODE REGS. tit. 2, § 11065(a)(1)(D) (2018) (defining "assistive animal" as including a "'support dog' or other animal that provides emotional, cognitive, or other similar support to a person with a disability, including, but not limited to, traumatic brain injuries or mental disabilities, such as major depression").

52. *EEOC Q&A*, *supra* note 47 (responding to a question regarding whether the DOJ's Title II and III regulations apply to employment).

53. *Id.* (stating it "may be more difficult to show that an emotional support animal assists a worker in overcoming a workplace barrier" and "[t]he argument could be made that workplace stress is a barrier and that an animal can help overcome that, but it's a really sticky issue").

54. *See Equal Emp't Opportunity Comm'n v. CRST Int'l, Inc.*, No. 3:17-cv-241-J-32JBT, 2017 WL 4959219, at *1–2 (M.D. Fla. Nov. 1, 2017) (granting request by company to transfer the case to the Northern District of Iowa). As of the writing of this Article, this case was ongoing. The EEOC's amended complaint described the dog as an emotional support/service dog, but in the EEOC's press

There has been limited case law analyzing whether allowing an emotional support animal in the workplace environment is a reasonable accommodation.⁵⁵ *Maubach v. City of Fairfax*⁵⁶ distinguished between the definition of service animal under Titles II and III and the lack of specific regulations for service animals under Title I.⁵⁷ The *Maubach* court acknowledged that if the case was analyzed under Title II or III, the employee would not have the right to bring her dog to the workplace as an accommodation because the dog was not trained to perform any particular task relating to the employee's disability.⁵⁸ The court "assumed without deciding that an emotional support animal qualifies as a reasonable accommodation under Title I of the ADA."⁵⁹ Finally, the court reiterated that an employer's obligation to allow a service animal must be assessed under a context-specific inquiry given the lack of definitive requirements under Title I.⁶⁰

release, the dog was described as a "trained service dog to help control anxiety and wake him from nightmares." Compare Amended Complaint at 1, Equal Emp't Opportunity Comm'n v. CRST Int'l, Inc., No. 3:17-cv-241-J-32JBT, 2017 WL 4959219 (M.D. Fla. May 17, 2017), with Press Release, Equal Emp't Opportunity Comm'n, EEOC Sues CRST for Disability Discrimination and Retaliation (Mar. 3, 2017), <https://bit.ly/2QsUeKy> [<https://perma.cc/QVB3-KXMP>]. As discussed *supra* note 47, under the definition used in the Title II and III regulations, a dog must be individually trained to do work or perform tasks. If the dog was individually trained to wake up the individual, the dog would fit within that definition. In its answer, the company raises as an affirmative defense that "the EEOC has no legal authority under the ADA or its Regulations to require an employer to permit an employee to have an emotional support dog at work with him," referencing the lack of a definition of service animal under Title I compared to the Title II and Title III regulations. Answer to Amended Complaint at 10, Equal Emp't Opportunity Comm'n v. CRST Int'l, Inc., No. 3:17-cv-241-J-32JBT, 2018 WL 3552343 (N.D. Iowa July 24, 2018); see also Equal Emp't Opportunity Comm'n v. CRST Int'l, Inc., No. 17-cv-129-LRR, 2018 WL 3552343, at *1 (N.D. Iowa July 24, 2018) (providing rulings on trial matters and describing the accommodation as having an emotional support animal on the employee's truck).

55. *Maubach v. City of Fairfax*, No. 1:17-cv-921, 2018 WL 2018552, at *6 n.6 (E.D. Va. Apr. 30, 2018) ("Title I has no specific regulations or guidance relating to service animal or emotion[al] support animals, and there is very little case law addressing the question . . ."). The *Maubach* court also stated "[v]ery few cases have addressed the use of emotional support animals as a reasonable accommodation in the employment context" and distinguished the *Maubach* case with the *Clark v. School District Five of Lexington & Richland Counties* case discussed *infra* notes 93–105 and accompanying text. See *id.* at *7 n.9.

56. *Maubach v. City of Fairfax*, No. 1:17-cv-921, 2018 WL 2018552 (E.D. Va. Apr. 30, 2018).

57. See *id.* at *6 n.6 (discussing a case involving an employee requesting she be allowed to bring an emotional support dog to work).

58. *Id.* (setting forth the definition of service animal under Titles II and III and stating the dog did not qualify as a service animal under that definition).

59. *Id.*

60. *Id.* at *6 n.7.

The U.S. District Court for the District of New Mexico, in *United States v. Dental Dreams, LLC*,⁶¹ referenced the broader definition of assistance animal used by the Department of Housing and Urban Development (HUD) in interpreting the obligations of housing providers under the Fair Housing Act (FHA) in its discussion of service animals under Title I of the ADA.⁶² The *Dental Dreams* court cited to a 2013 HUD notice that defined assistance animal as one who “works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”⁶³ The HUD notice specifically states that an “assistance animal” is not required to be individually trained or certified.⁶⁴ The *Dental Dreams* court stated, “It is unclear whether the EEOC would follow the more stringent ‘service animal’ definition set forth by the DOJ or HUD’s interpretation of assistance animal.”⁶⁵

The *Dental Dreams* court also discussed the issue of whether allowing a service animal in training could be considered a reasonable accommodation.⁶⁶ Although the service animal regulations under Titles II and III of the ADA do not require certification, they do require service animals to be “individually trained” to do work or perform tasks.⁶⁷ The regulations under Title II and Title III do not require public entities to modify policies to allow service animals “in training” on public entity or public accommodation premises.⁶⁸ The *Dental Dreams* court acknowledged the service dog in the case was still “in training,” but because there was evidence the service animal could work for the benefit of the plaintiff, a jury

61. *United States v. Dental Dreams, LLC*, 307 F. Supp. 3d 1224 (D.N.M. 2018).

62. *Id.* at 1249.

63. *Id.* (citing U.S. DEP’T OF HOUS. & URBAN DEV., SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 2 (Apr. 25, 2013) [hereinafter HUD FHEO NOTICE], <https://bit.ly/2kOg7F0> [<https://perma.cc/6UW7-L9UM>]).

64. *Id.* (citing HUD FHEO NOTICE, *supra* note 63).

65. *Id.*

66. *See id.* at 1250.

67. *See supra* note 47 and accompanying text (providing Title II and Title III regulations).

68. *See* Rebecca J. Huss, *A Conundrum for Animal Activists: Can or Should the Current Legal Classification of Certain Animals Be Utilized to Improve the Lives of All Animals? The Intersection of Federal Disability Laws and Breed Discriminatory Legislation*, 2015 MICH. ST. L. REV. 1561, 1593–97 (2015) [hereinafter Huss, *Conundrum*] (analyzing service animals in training issue). Note that most states have provided for individuals with service animals in training to have access to public accommodations under state anti-discrimination laws. *Id.* (discussing how states incorporate this protection in state statutes).

could find the service animal had “sufficient training,” which precluded summary judgment.⁶⁹ Presumably, the issue of the level of training would be relevant to determine whether it would be an “undue hardship” to allow such an animal in the premises.⁷⁰

A representative of the EEOC clarified that a “dog’s tasks don’t have to directly relate to the employee’s job functions; they need only to eliminate a work-place barrier.”⁷¹ The service tasks could include alerting an employee to an oncoming seizure or picking up items the employee drops.⁷² However, similar to the requirements in other federal anti-discrimination laws, there must be a “nexus” between the disability and the accommodation provided by the service animal.⁷³ Because the Titles II and III restrictions on species do not apply, an individual is not limited to utilizing a dog (or miniature horse) as a service animal under Title I.⁷⁴

69. *Dental Dreams, LLC*, 307 F. Supp. 3d at 1250. The *Dental Dreams* court found the analysis used under Title III “persuasive in determining whether the use of the [service animal] in the office was a plausibly reasonable accommodation.” *Id.* Note the *Dental Dreams* case is extremely complex with multiple claims and parties. This Article focuses solely on the issue of defining a service animal.

70. See *infra* notes 114–37 (discussing undue hardship). Cf. *Vina D. v. Perdue*, EEOC Appeal No. 0120150054, 2017 WL 2437467, at *4, *6 (May 25, 2017) (affirming administrative judge’s order rejecting a complaint the agency did not accommodate an employee who wanted to bring her dog in training to the workplace).

71. EEOC Q&A, *supra* note 47 (responding to a question about an employee’s service dog who does not perform tasks directly related to the employee’s job functions). Note there are older cases that focused on whether a service dog was necessary for the employee to perform the essential functions of the job. See, e.g., *Schultz v. Alticor/Amway Corp.*, 177 F. Supp. 2d 674, 678–79 (W.D. Mich. 2002) (determining a hearing-impaired employee’s service dog was not “necessary for the performance of any essential function” of the job), *aff’d*, 43 F. App’x 797 (6th Cir. 2002).

72. EEOC Q&A, *supra* note 47 (“Requiring another employee to help him retrieve dropped items, for example, is not a reasonable accommodation.”). Although the definition of service animal under Titles II and III is limited to dogs, those regulations also provide for certain assessment factors to determine whether a public entity or public accommodation is required to accommodate an individual utilizing a miniature horse as a service animal. 28 C.F.R. § 35.136(i) (2018); 28 C.F.R. § 36.302(c)(9) (2018) (setting forth assessment factors).

73. Cf. *Struthers v. Winter*, EEOC Appeal No. 07A40043, 2007 WL 788268, *1–2 (Mar. 7, 2007) (denying request for reconsideration of EEOC decision that the employee “could not prevail on her claim of denial of reasonable accommodation because she failed to establish the requisite nexus between her disability and the accommodation at issue”). See, e.g., HUD FHEO Notice, *supra* note 63, at 3 (asking whether the person has a “disability-related need for an assistance animal” and inquiring whether the animal “alleviates one or more of the identified symptoms or effects of a person’s existing disability”).

74. See, e.g., *Duchan v. L.A. Unified Sch. Dist.*, No. B279524, 2018 WL 636307, at *3–4 (Cal. Ct. App. Jan. 31, 2018) (discussing a case under California law where a teacher was using a cat as a support pet).

This does not mean that an employer would be required to *provide* a service animal to an employee.⁷⁵ The EEOC offers a service animal as an example of “equipment, aids or services” that an employer is not required to provide as a reasonable accommodation.⁷⁶ Generally, if the modification “assists the individual throughout his or her daily activities, on and off the job, it will be considered a personal item that the employer is not required to provide.”⁷⁷ Instead, the reasonable accommodation is to allow the individual with a disability to have the service animal with him or her at work.⁷⁸ In the absence of more definitive guidance by the EEOC, further court opinions should assist employers and employees in determining the limits on which animals would be considered service animals for purposes of determining whether an accommodation is reasonable.

B. Interactive Process to Determine Reasonable Accommodation

EEOC guidance for determining the appropriate reasonable accommodation states the “accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with a disability.”⁷⁹ Either party’s failure to engage in the interactive process in good faith is a consideration in determining potential liability.⁸⁰ It is necessary to make an individualized assessment of the job and any limitations of the employee.⁸¹

*Arndt v. Ford Motor Company*⁸² illustrates how the interactive process is used both to identify appropriate reasonable accommodations and to determine how an employee’s disability limits the individual’s ability to work.⁸³ In *Arndt*, Mr. Arndt, an employee of the Ford Motor Company, requested that his employer allow him to

75. 29 C.F.R. pt. 1630 app. §1630.2(o) (2018).

76. *Id.*

77. 29 C.F.R. pt. 1630 app. §1630.9 (2018).

78. 29 C.F.R. pt. 1630 app. § 1630.2(o) (2018) (providing an example of a person with a visual impairment using a guide dog).

79. 29 C.F.R. pt. 1630 app. § 1630.9 (2018).

80. *See* *Assaturian v. Hertz Corp.*, No. 13-00299 DKW KSC, 2014 WL 4374430, at *9–10 (D. Haw. Sept. 2, 2014) (discussing obligations of both parties to engage in an interactive process in cases where an employee alleges he requested the ability to bring his service animal to work as an accommodation).

81. 29 C.F.R. pt. 1630 app. § 1630.9 (2018).

82. *Arndt v. Ford Motor Co.*, 716 F. App’x 519 (6th Cir. 2017).

83. *Id.* The EEOC’s interpretive guidance sets out a four-part problem-solving approach for this process. *See* 29 C.F.R. pt. 1630 app. §1630.9 (2018). The guidance states the employer should:

(1) Analyze the particular job involved and determine its purpose and essential functions;

bring his service dog to work to assist him with symptoms associated with his PTSD.⁸⁴ Mr. Arndt argued Ford failed to engage in the good-faith interactive process because the process was unreasonably delayed, he made repeated requests for information, and the company did not propose an alternative accommodation.⁸⁵ Both the district court and circuit court rejected each of these arguments.⁸⁶ On appeal from the district court's grant of summary judgment in favor of Ford, the circuit court first found that the lower court did not err in determining when the interactive process began, which shortened the time of the overall process.⁸⁷ The court also considered the "novelty" of Mr. Arndt's request, finding it was "reasonable for his process to take longer than average."⁸⁸ Although the court acknowledged that the questioning process caused Mr. Arndt distress, the court determined that the process did "not support a finding that Ford failed to participate in the process in good faith" because guidance to the ADA regulations advise employee consultation.⁸⁹ Finally, the court reiterated that "an em-

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- (2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;
 - (3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and
 - (4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

Id.

84. *Arndt*, 717 F. App'x at 520–21. Note, it is the obligation of the employee to request a reasonable accommodation, and if "the need for an accommodation is not obvious, an employer . . . may require that the individual with a disability provide documentation of the need for accommodation." 29 C.F.R. pt. 1630 app. §1603.9 (2018); see, e.g., *Connelly v. Wellstar Health Sys., Inc.*, No. 1:16-CV-2687-RWS, 2018 WL 1835582, at *2–3 (N.D. Ga. Feb. 28, 2018) (granting employer's motion for summary judgment in a case where the plaintiff stated during a deposition that she never requested an emotional support animal even though in her complaint she alleged the employer failed to allow her to have "a pet as an emotional companion").

85. *Arndt*, 717 F. App'x at 528–29.

86. *Id.*

87. *Id.* at 528. Mr. Arndt had made multiple requests for accommodation, and the district court found the relevant interactive process was not triggered until the second request for accommodation when Mr. Arndt returned to work with a return-to-work certification from a doctor with the restriction of the presence of his service dog. *Id.* at 523, 528.

88. *Id.* In the recitation of the facts, the *Arndt* court discussed the interactive process the company engaged in, including the involvement of a regional safety manager and Mr. Arndt's supervisor, to consider factors related to having a service dog on the plant floor and around machinery. *Id.*

89. *Id.* at 528–29.

ployer is not required to counter with an alternative accommodation in order to have participated in the interactive process in good faith.”⁹⁰ The *Arndt* court affirmed the district court’s rejection of Mr. Arndt’s claims of failure to accommodate and constructive discharge and upheld the district court’s grant of summary judgment in favor of Ford.⁹¹

Although employers are not required to suggest alternative accommodations,⁹² there are examples of employers doing so in cases involving requests for service-animal access.⁹³ In *Clark v. School District Five of Lexington and Richland Counties*,⁹⁴ the employer suggested alternative accommodations to Ms. Clark, a teacher diagnosed with PTSD and panic attacks.⁹⁵ Ms. Clark had trained her dog, Pearl, to “stand her ground, create a barrier between [Ms. Clark] and others, and put pressure on [Ms. Clark’s] chest or lick her hand.”⁹⁶ For two years, Pearl, acting as a therapy dog, accompanied Ms. Clark to school without any student complaints.⁹⁷

However, when the school was moved, the principal announced no dogs would be allowed at the new location.⁹⁸ Ms. Clark initiated the process to request the accommodation of having Pearl with her at school as a service dog.⁹⁹ In denying the request, the

90. *Id.* at 529.

91. *Id.* at 527–30.

92. *Id.* at 529 (illustrating a case where the employer was not required to suggest an alternative accommodation); see also *Assaturian v. Hertz Corp.*, No. 13-00299 DKW KSC, 2014 WL 4374430, at *9 (D. Haw. Sept. 2, 2014) (“A reasonable factfinder could conclude that [the employee] was in a superior position to propose an alternative accommodation and to provide documentation to support his request to bring [his service animal] to work.”).

93. See, e.g., *Baker v. Dupnik*, No. CV 09-0015-TUC-HCE, 2011 WL 13183250, at *13 (D. Ariz. Mar. 31, 2011) (denying request to allow service animal but providing other actions the employer was willing to take, such as purchasing an extended pick-up tool to assist an employee in picking up dropped items); *Clark v. Sch. Dist. Five of Lexington & Richland Ctys.*, 247 F. Supp. 3d 734 (D.S.C. 2017) (providing alternatives).

94. *Clark v. Sch. Dist. Five of Lexington & Richland Ctys.*, 247 F. Supp. 3d 734 (D.S.C. 2017).

95. *Id.* at 738–39. This case was settled less than a month after this decision. See *Clark v. Sch. Dist. Five of Lexington & Richland Ctys.*, No. 3:15-cv-02864-CMC (D.S.C. May 11, 2017).

96. *Clark*, 247 F. Supp. 3d. at 739.

97. *Id.* at 738.

98. See *id.* at 738–39. The rationale for this discussion included perception, environmental changes, and fairness to other teachers. *Id.* at 739. Environmental changes included “being in an enclosed, bigger school; better manicured grass; dog excrement.” *Id.*

99. See *id.* Ms. Clark notified the principal and then contacted the appropriate person at the school district, Dr. Bain, to request the accommodation. *Id.* In her response to the request for accommodation, Dr. Bain noted the school district’s position was that Pearl did not meet the definition of service animal under

representative of the school district, Dr. Bain, raised issues of whether Pearl qualified as a service animal as well as concerns over “students who may be allergic to and/or afraid of dogs.”¹⁰⁰ Dr. Bain also suggested other accommodations, including Ms. Clark wearing a weighted vest or removing herself from the environment in the event of a panic attack.¹⁰¹ Ms. Clark’s psychologist provided an opinion that having Pearl accompany Ms. Clark would “accommodate [her] disability” and a weighted vest would not suffice to calm her during a panic attack.¹⁰²

The *Clark* court found that a question of fact “as to whether [Ms. Clark] was able to perform the essential functions of her job, without accommodation,” existed.¹⁰³ The court turned to whether Ms. Clark’s requested accommodation of bringing Pearl to work “was the only reasonable accommodation.”¹⁰⁴ Because the school district agreed “to allow a trained service dog if a psychologist opined this was the ‘only reasonable workplace accommodation,’” the court denied the school district’s motion for summary judgment

Title II of the ADA because Pearl was an emotional support dog. *Id.* at 739–40. *But see supra* notes 47–78 and accompanying text (discussing the lack of a definition of service animal under Title I of the ADA and the challenge associated with dealing with animals used for emotional support).

100. *Clark*, 247 F. Supp. 3d at 741. The issue of allergies is frequently raised in the school environment. U.S. DEP’T OF JUSTICE, SERVICE ANIMALS (2011), <https://bit.ly/2aPo8k8> [<https://perma.cc/ZWG4-4SBN>]. However, it is insufficient for denying access to service animals:

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom . . . , they should both be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

Id.; see also Rebecca J. Huss, *Canines in the Classroom Revisited: Recent Developments Relating to Students’ Utilization of Service Animals at Primary and Secondary Educational Institutions*, 9 ALBANY GOV’T L. REV. 1, 36–37 (2016) (discussing a dispute involving a student with a service animal and a teacher with allergies); Rebecca J. Huss, *Canines in the Classroom: Service Animals in Primary and Secondary Educational Institutions*, 4 J. ANIMAL L. & ETHICS 11, 19–22 (2011) (discussing allergies in school environments). The school district in the *Clark* case also raised the issue of whether a service dog would be a distraction in the school environment. *Clark*, 247 F. Supp. 3d at 750.

101. *Clark*, 247 F. Supp. 3d at 740. In order to be able to remove herself from the environment, Ms. Clark would need to provide notice to the school’s administration to ensure her students would remain supervised. *Id.* Dr. Bain also raised the issue of whether Ms. Clark was able to perform the essential job responsibility of interaction and supervision of students, including the “risk of close contact.” *Id.*

102. *Id.* at 750.

103. *Id.* at 749.

104. *Id.* It is generally a question of fact for a jury whether a requested accommodation is reasonable. *Id.*

on the ADA claim finding “a genuine issue of material fact as to whether Pearl is the only reasonable accommodation . . . or whether the accommodations offered by the [school district] were reasonable.”¹⁰⁵

C. *Modification of Leave Policies*

An employee may request to take leave from his or her employer in order to obtain a service animal.¹⁰⁶ Some service dog training organizations require the recipients of the animals to participate in multi-week classes at their premises to be matched with a dog.¹⁰⁷ EEOC guidance states employers “may have to modify policies that limit the amount of leave employees can take when an employee needs additional leave as a reasonable accommodation.”¹⁰⁸ However, an employer is not required to provide paid leave beyond its standard paid leave policy, and, as with other accommodations, an employer does not have to grant leave if doing so would create an undue hardship.¹⁰⁹ For example, in *Cotuna v. Wal-Mart Stores, Inc.*,¹¹⁰ where an employee alleged part of the

105. *Id.* at 750–52. The *Clark* court found other genuine issues of material fact, including whether the school district acted in good faith in engaging with Ms. Clark in the interactive process and whether Ms. Clark caused the interactive process to break down by obstructing the process. *Id.* at 751.

106. *See, e.g., infra* notes 110–11 and accompanying text (discussing a case involving request for leave).

107. *E.g., Assistance Dog FAQs, Q: What Is the Matching Process*, CANINE COMPANIONS FOR INDEPENDENCE, <https://bit.ly/2Gbh3W> [<https://perma.cc/U6GR-RHS6>] (providing for a two-week team-training class); *FAQs: Applying for a Service Dog*, FREEDOM SERV. DOGS AM., <https://bit.ly/2QN69C3> [<https://perma.cc/3C3J-NC82>] (requiring recipients to attend a two-week class on the premises and spend an additional week at the recipient’s home with a trainer and the dog); *The GDB Class Experience*, GUIDE DOGS FOR BLIND, <https://bit.ly/2BhYTnR> [<https://perma.cc/477K-APGP>] (describing two-week on-site training program).

108. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, EMPLOYER-PROVIDED LEAVE AND THE AMERICANS WITH DISABILITIES ACT (May 9, 2016) [hereinafter EEOC, EMPLOYER-PROVIDED LEAVE], <https://bit.ly/2C7Sw8y> [<https://perma.cc/9JWL-SUKU>] (setting forth the EEOC position on taking leave); *see also* EQUAL EMP’T OPPORTUNITY COMM’N, QUESTIONS ABOUT DEAFNESS AND HEARING IMPAIRMENTS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT, <https://bit.ly/2fRTw4U> [<https://perma.cc/K8ZS-TF23>] (providing example of an employee requesting leave to train a new hearing dog and the EEOC’s position that the employer would be required to “provide additional unpaid leave as a reasonable accommodation, absent undue hardship”).

109. EEOC, EMPLOYER-PROVIDED LEAVE, *supra* note 108.

110. *Cotuna v. Wal-Mart Stores, Inc.*, No. 16-2519, 2017 WL 5171247, at *3 (6th Cir. Aug. 31, 2017); Petition for Writ of Certiorari, *Cotuna v. Wal-Mart Stores, Inc.*, No. 17-1057, 2018 WL 620461 (U.S. Jan. 16, 2018) (setting forth employer’s version of facts including one of the purposes of extending leave was to continue the training of a service animal), *cert. denied*, 138 S. Ct. 1443 (Apr. 2, 2018).

reason for his request for an extension of leave was to train a service animal, the court found the employee's reasonable accommodation claim without merit because the employee's requested leave was "functionally for an indefinite period."¹¹¹ The EEOC provides several factors, such as "the impact of an employee's absence on coworkers" and "on the employer's operations and its ability to serve customers/clients appropriately and in a timely manner" to determine whether granting leave would create an undue hardship.¹¹² As with the reasonable accommodation analysis generally, an employer must support the decision to deny leave using the individual circumstances of the employee and workplace.¹¹³

D. The Issue of Allergies and Potential for Injuries

Employers may raise concerns about the impact on other employees if animals are allowed in the workplace.¹¹⁴ An individual can be deemed a person with a disability protected under the ADA if his or her allergies substantially limit a major life activity, such as breathing.¹¹⁵ If dealing with animals is an essential job function, as defined by the employer, an employer would not be required to allow employees to avoid animals entirely; but, as discussed above, it might be required to provide a reasonable accommodation.¹¹⁶

The EEOC does not allow an employer to "pick and choose" between accommodating one person with a disability over another.¹¹⁷ The EEOC recommends separating the "two employees'

111. *Cotuna*, 2017 WL 5171247, at *3.

112. EEOC, EMPLOYER-PROVIDED LEAVE, *supra* note 108.

113. *Id.*

114. *Infra* notes 164–354 and accompanying text (discussing concerns and ways employers may be able to mitigate the issue).

115. *Williams v. Gwinnett Cty. Pub. Sch.*, 425 F. App'x 787 (11th Cir. 2011) (holding there was no issue of material fact supporting employee's claim that his dog allergy is a disability under the ADA because there was no evidence the impairment substantially limited any of the employee's major life activities); *Gallagher v. Sunrise Assisted Living of Haverford*, 268 F. Supp. 2d 436, 439–42 (E.D. Pa. 2003) (analyzing whether employee with allergies qualified as a person with a disability in a case where an employee argued an assisted living facility with two dogs and several cats did not make a reasonable accommodation for her allergies).

116. See *Ahmad v. Conn. Dep't of Transp.*, No. HHDCV 136045783S, 2015 WL 897478, at *5 (Conn. Super. Ct. Feb. 26, 2015). Because taxi drivers are required to provide transportation to individuals utilizing service animals under state and federal law, dealing with those individuals and animals would be an essential function of the job. *Id.* The *Ahmad* court acknowledged that a phobia could qualify as a mental disability, but because the elimination of an essential function is not considered a reasonable accommodation, it granted the employer's motion to strike the complaint. *Id.* at *6.

117. EEOC Q&A, *supra* note 47; see also Steven Greenhouse, *When Treating One Worker's Allergy Sets Off Another's*, N.Y. TIMES (May 10, 2010), <https://www.nytimes.com/2010/05/10/us/health/10allergy.html>.

workspaces so that the person who has the allergy (or phobia) doesn't have to come in contact with the dog."¹¹⁸ This recommendation is similar to the DOJ's position relating to allergies under Titles II and III of the ADA.¹¹⁹ However, the process for determining a reasonable accommodation also permits employers to "investigate whether there is an accommodation other than a dog that would be equally effective" for the individual requesting that the employer allow a service dog on the premises.¹²⁰

Allergies can be the basis for an employer's claim that allowing a service dog would cause an undue hardship.¹²¹ In *Maubach*, the court found there was no way to allow an emotional support animal in a glass-enclosed, locked space containing highly sensitive equipment "while also eliminating the risk of allergic reactions to employees."¹²² Because it was "prohibitively expensive" for the employer to provide a new space for either the employee with the disability or employees with allergies, the animal's presence imposed an undue hardship on the employer.¹²³

nyti.ms/2SHpulB [<https://perma.cc/2NDT-4DLC>] (reporting on the filing of a complaint with the EEOC by an individual using an allergy-alert dog who was told she could not bring the dog to work after a co-worker suffered an allergy attack). The employee in this case later sued the employer—the City of Indianapolis. See Complaint, *Kysel v. City of Indianapolis*, No. 1:12-cv-00492-JMS-TAB (S.D. Ind. filed Apr. 16, 2012); *Ex-Worker Sues City over Service Dog for Paprika Allergy*, INDYCHANNEL (Apr. 17, 2012), <https://bit.ly/2SM8cDW> [<https://perma.cc/ZL8R-4CFC>]. Although the City of Indianapolis admitted no fault, in a settlement, it agreed to training of the relevant departments' employees and a payment to the plaintiff of \$85,000. Associated Press, *Indy Pays Worker \$85,000 over Paprika Dispute*, HERALD (June 1, 2013), <https://bit.ly/2SHpySj> [<https://perma.cc/USX8-D7YB>]; cf. *Lassiter v. MBNA Mktg. Sys., Inc.*, No. 1:06CV2761, 2007 WL 3047210 (N.D. Ohio 2007) (providing another example of a conflict between an employee with allergies and employees utilizing service animals).

118. *EEOC Q&A*, *supra* note 47.

119. See *supra* note 100 (setting forth the DOJ's position in the Title II and Title III context).

120. *Id.*; see, e.g., *supra* notes 95–105 and accompanying text (discussing a case where a school district raised the issue of allergies as one of the reasons it proposed an alternative to a request by a teacher to bring a service dog with her to school).

121. *Maubach v. City of Fairfax*, No. 1:17-cv-921, 2018 WL 2018552, at *6 (E.D. Va. Apr. 30, 2018).

122. *Id.*

123. *Id.* at *6 n.7. Because of this fact, the employee's demand to have the dog with her in the space was not a reasonable accommodation. *Id.* at *6. The *Maubach* court granted summary judgment in favor of the employer on multiple grounds. *Id.* at *7. The issue of allowing a service animal in a similar closed environment was allowed to proceed in a 2011 case. See *Baker v. Dupnik*, No. CV 09-0015-TUC-HCE, 2011 WL 13183250 (D. Ariz. Mar. 31, 2011). In the *Baker* case an employee in a sheriff's department's communication center, which was an enclosed space, requested she be allowed to bring her service animal to assist with mobility issues. *Id.* at *10–11. The request was denied with a representative of the

Another basis for denying a request to allow a service animal is any undue disruption caused by an individual partnered with a service animal, including any disruption caused by the service animal.¹²⁴ If an animal is a threat to others in the workplace, allowing that animal to accompany the individual would not be a reasonable accommodation.¹²⁵

The definition of “direct threat” under Title I focuses on whether the *individual employee* poses significant risk of substantial harm to the health or safety of others or the ability of such individual to safely perform the essential functions of the job.¹²⁶ The significant risk must not be eliminable by providing a reasonable accommodation.¹²⁷ Assessment of the harm must be made “on the best available objective evidence.”¹²⁸ EEOC guidance states, “The risk can only be considered when it poses a significant risk, i.e., high probability, of substantial harm; a speculative or remote risk is insufficient.”¹²⁹ For example, a “slightly increased risk” is not sufficient to deny an employment opportunity to an individual with a disability.¹³⁰ Given the EEOC’s lack of specific guidance on the factors to be considered, it can be helpful to look to other federal agencies for guidance if an employer believes a service animal poses a direct threat.¹³¹

The definition of “direct threat” under the Titles II and III regulations is similar.¹³² The DOJ requires an individualized assess-

employer raising issues of allergies and the dog acting as a possible trip hazard. *Id.* at *13–14. The *Baker* court allowed the case to continue. *Id.* at *40.

124. 29 C.F.R. pt. 1630 app. § 1630.2(p) (2018).

125. *See infra* notes 121–37 and accompanying text (discussing undue hardship and direct threat). State law can provide guidance for employers. For example, California regulations allow employers to require

an assistive animal in the workplace: (A) is free from offensive odors and displays habits appropriate to the work environment, for example, the elimination of urine and feces; and (B) does not engage in behavior that endangers the health or safety of the individual with a disability or others in the workplace.

CAL. CODE REGS. tit. 2, § 11065(a)(2) (2018).

126. 29 C.F.R. § 1630.2(r) (2018).

127. 42 U.S.C. § 12111(3) (2018).

128. 29 C.F.R. § 1630.2(r) (2018). Current medical knowledge can be used to support the employer’s analysis. *Id.* Factors to determine whether an individual poses a direct threat include: “(1) The duration of the risk; (2) The nature and severity of the potential harm; (3) The likelihood that the potential harm will occur; and (4) The imminence of the potential harm.” *Id.*

129. 29 C.F.R. pt. 1630 app. § 1630.2(r) (2018).

130. *Id.*

131. *Infra* notes 132–37 and accompanying text (discussing DOJ and HUD guidance).

132. 28 C.F.R. §§ 35.104, 36.104 (2018) (defining direct threat as “a significant risk to the health or safety of others that cannot be eliminated by a modification of

ment using objective evidence regarding the risk.¹³³ The Title II and Title III regulations specifically provide if the “animal is out of control and the animal’s handler does not take effective action to control it,” public entities and public accommodations may exclude the service animal.¹³⁴

In the housing context, HUD guidance requires an individualized assessment of the specific animal to determine whether an assistance animal poses a direct threat.¹³⁵ HUD requires objective evidence to exclude an assistance animal based on that specific animal’s conduct and “*not* on mere speculation or fear about the types of harm or damage an animal may cause and *not* on evidence

policies, practices or procedures”). The DOJ proposed including a specific rule excluding service animals if the animal posed “a direct threat to the health or safety of others” but decided not to include it in the final regulations, stating it believed the general “direct threat” language in the regulations provided the exception. Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56,164, 56,197 (Sept. 15, 2010) [hereinafter Title II Regulation Guidance]; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56,236, 56,271 (Sept. 15, 2010) [hereinafter Title III Regulation Guidance] (implementing the final regulations for Title II and Title III of the ADA and providing guidance on changes in the regulations).

133. 28 C.F.R. §§ 35.139(b), 36.208(b) (2018) (providing the probability the potential injury will occur and severity of the risk must be considered). The assessment must also consider whether reasonable modifications of “policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.” 28 C.F.R. § 35.139(b) (2018); 28 C.F.R. § 36.208(b) (2018).

134. 28 C.F.R. § 35.136(b)(1) (2018); 28 C.F.R. § 36.302(c)(2)(i) (2018). Service animals can also be excluded if they are not housebroken or under the control of their handlers. 28 C.F.R. § 35.136(b)(1)–(2) (2018); 28 C.F.R. § 36.302(c)(2)(i)–(ii) (2018).

135. HUD FHEO NOTICE, *supra* note 63 (allowing for an assistance animal request to be denied if “(1) the specific assistance animal in question poses a direct threat that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation”); *see also* Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63,834, 63,835 (Oct. 27, 2008) [hereinafter Pet Ownership for the Elderly and Disabled]. Those rules state:

The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question, such as the animal’s current conduct or a recent history of overt acts. The assessment must consider the nature, duration, and severity of the risk of injury; the probability that the potential injury will actually occur; and whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk. In evaluating a recent history of overt acts, a provider must take into account whether the assistance animal’s owner has taken any action that has reduced or eliminated the risk. Examples would include obtaining specific training, medication, or equipment for the animal.

Pet Ownership for the Elderly and Disabled, *supra* note 135, at 63,837.

about harm or damage that other animals have caused.”¹³⁶ Using the EEOC’s guidance on undue hardship and direct threat, and given the approach taken by other federal agencies, employers should utilize an objective, individualized analysis in order to determine whether it is appropriate to allow an employee to be accompanied by his or her specific service animal.¹³⁷

Without an applicable law requiring employers to permit service animals in the workplace, employers have discretion to determine whether to allow animals at work.¹³⁸ The next part of this Article discusses some of the research analyzing whether animals at work provide benefits to employees and employers.¹³⁹

II. COMPANION ANIMALS IN THE WORKPLACE

The impact of companion animals on the health and well-being of humans is the subject of a growing body of research.¹⁴⁰ Concerns exist regarding the rigor of the empirical methodology supporting some of the claims of benefits to humans from interactions with

136. HUD FHEO NOTICE, *supra* note 63 (italicized language underlined in original).

137. See *supra* notes 79–137 and accompanying text (analyzing the process for determining reasonable accommodation under Title I of the ADA).

138. See *supra* notes 16–21 and accompanying text (discussing the prevalence of animal-friendly offices). An employee could also negotiate a contractual right to bring an animal to work.

139. See *infra* notes 140–62 and accompanying text (discussing research).

140. See JOHN BRADSHAW, *THE ANIMALS AMONG US* 75–105 (2017) (analyzing health claims attributed to interaction with companion animals); Aubrey H. Fine & Alan M. Beck, *Understanding Our Kinship with Animals: Input for Health Care Professionals Interested in the Human-Animal Bond*, in *HANDBOOK ON ANIMAL-ASSISTED THERAPY: FOUNDATIONS AND GUIDELINES FOR ANIMAL-ASSISTED INTERVENTIONS* 3, 3–5 (Aubrey H. Fine ed., 4th ed. 2015) (analyzing the human-animal bond); Lynette A. Hart & Mariko Yamamoto, *Dogs as Helping Partners and Companions for Humans*, in *THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOR AND INTERACTIONS WITH PEOPLE* 247, 248–70 (James Serpell ed., 2d ed. 2017) (discussing the role and impact of dogs on humans, including studies showing physical and psychological benefits of the companionship of dogs).

animals.¹⁴¹ However, continuing research demonstrates the potential benefits of animals in the workplace.¹⁴²

Research indicates workplace stress levels are increasing.¹⁴³ Employers can incur additional costs because inappropriate stress can negatively impact the health and well-being of employees, leading to increased healthcare costs.¹⁴⁴ Stress can also lead to diminished “productivity, performance and decision making.”¹⁴⁵ Lost productivity is associated with lower commitment, including employees quitting their jobs.¹⁴⁶

Anne M. Foreman et al. have analyzed the benefits and potential challenges of animals in the workplace and considered research that might have implications in this context.¹⁴⁷ For example, studies show some peoples’ performance of certain stress-producing tasks, such as completing arithmetic problems or engaging in speech exercises, improves when accompanied by their companion animals.¹⁴⁸

Potential positive effects on social interactions among employees are also supported by research.¹⁴⁹ This is important because

141. Harold Herzog, *The Research Challenge: Threats to the Validity of Animal-Assisted Therapy Studies and Suggestions for Improvement*, in HANDBOOK ON ANIMAL-ASSISTED THERAPY FOUNDATIONS AND GUIDELINES FOR ANIMAL-ASSISTED INTERVENTIONS 402, 402–06 (Aubrey H. Fine ed., 4th ed. 2015) (discussing issues with research and indications of improvements in the research); Hiroharu Kamioka, *Effectiveness of Animal-Assisted Therapy: A Systematic Review of Randomized Controlled Trials*, 22 COMPLEMENTARY THERAPIES MED. 371, 386 (2014) (concluding animal-assisted therapy may be an effective treatment for certain mental or behavioral disorders in environments where people enjoy being around animals, and making recommendations for future research); Javier Lopez-Cepero Borrego, *Animal-Assisted Interventions: Review of Current Status and Future Challenges*, 14 INT’L J. PSYCHOL. & PSYCHOL. THERAPY 85, 97–98 (2014) (analyzing research and raising concerns); James Serpell et al., *Current Challenges to Research on Animal-Assisted Interventions*, 21 APPLIED DEVELOPMENTAL SCI. 223, 229 (2017) (discussing issues with clinical studies of animal-assisted interventions).

142. Anne M. Foreman et al., *Dogs in the Workplace: A Review of the Benefits and Potential Challenges*, 14 INT’L J. ENVTL. RES. & PUB. HEALTH 498, 510–12 (2017) (discussing issues of animals in the workplace and providing directions for future research in the area).

143. Jenny Gumm, *Stress Relief in the Workplace* 23–24 (Sept. 2014) (unpublished Ph.D. dissertation, Pepperdine University) (on file with author).

144. *Id.* at 24 (citing to increasing costs such as increasing health care expenses and absenteeism).

145. *Id.*

146. *Id.*; see *supra* notes 21–28 and accompanying text (discussing the Banfield Survey and the perception that a pet-friendly workplace may be considered a valuable employee benefit).

147. Foreman et al., *supra* note 142, at 501–03.

148. *Id.* at 502.

149. *Id.* at 502–03 (discussing studies that might have implications regarding social interactions). The researchers in the Foreman study reported they were “not aware of any research studies on the impact of dogs on workplace productivity” in

conflict is another source of workplace stress.¹⁵⁰ Foreman et al. also considered research that indicates dogs may provide a source of social support.¹⁵¹ Social support in this context describes “the mechanisms by which relationships with other people buffer individuals from stress.”¹⁵² Several studies found the presence of a companion animal may lead to lower stress responses.¹⁵³

A 2012 study also examined the effects of dogs on employees’ stress levels and on organization perceptions.¹⁵⁴ This study reported that most employees “perceive dog presence on productivity neutrally.”¹⁵⁵ However, a sizable minority—20 percent—of employees without dogs perceive “dog presence as hurting their personal productivity, a percentage about equal to the number who perceives dog presence as beneficial.”¹⁵⁶ The study also considered physiological and self-reported stress.¹⁵⁷ While researchers found no significant physiological difference between employees who brought their dogs to work versus those who did not, self-reported feelings of stress differed.¹⁵⁸ Self-reported stress levels indicated “lower stress levels for employees with their dogs present, followed by non-pet owners.”¹⁵⁹ The “stress patterns for dog owners who did not bring their dogs to work appeared to consistently rise during the day” and “mirrored those of the group not bringing dogs to work.”¹⁶⁰

connection with raising the potential disadvantage that animals may provide a distraction to employees, including inviting more unsolicited social attention from other employees. *Id.* at 503. *But see* Randolph T. Barker, *Preliminary Investigation of Employee’s Dog Presence on Stress and Organizational Perceptions*, 5 INT’L J. WORKPLACE HEALTH MGMT. 15, 25–27 (2012) (reporting on study that includes perceptions by employees of the impact of having a dog on the premises on productivity).

150. Gumm, *supra* note 143, at 23.

151. Foreman et al., *supra* note 142, at 501.

152. *Id.*

153. *Id.*

154. Barker, *supra* note 149, at 17.

155. *Id.* at 25.

156. *Id.*

157. *Id.* at 17, 26–27.

158. *Id.* at 2.

159. *Id.* at 27.

160. *Id.* Another study considered the possible impact on stress of a companion animal in a simulated occupational setting. *See* Anna Stewart & Oriel Strickland, *A Companion Animal in a Work Simulation: The Roles of Task Difficulty and Prior Companion-Animal Guardianship in State Anxiety*, 21 SOC’Y & ANIMALS 249, 260 (2013). This study suggested that “not every employee would benefit from the presence of a companion animal” in the workplace. *Id.* at 260. However, “current companion animal guardians who work in a moderately stressful situation would be most likely to benefit from the presence of a dog.” *Id.* at 261. In contrast, “non-companion-animal guardians who work in a highly stressful setting

Until more rigorous, targeted studies are done, it may be challenging to assess whether there are significant physical and psychological benefits associated with allowing companion animals in the workplace.¹⁶¹ However, current research indicates possible benefits in employee social interaction, perception, social support, and stress reduction, all of which ultimately benefit the workplace.¹⁶² The counterargument, which is addressed in the next section of this Article, is that the risks may outweigh any rewards.¹⁶³

III. EMPLOYERS' CONCERNS

Adding animals to a workplace raises concerns by employers about potential liability and other risks.¹⁶⁴ To avoid any potential legal liability and to protect employees and the workplace, employers and proponents of adding animals to the workplace should recognize and mitigate possible risks.¹⁶⁵ For example, in the 2016 Banfield Survey, human resources managers reported hesitation regarding the implementation of a pet-friendly workplace policy because of allergy or health concerns in addition to the possibility of animals being a distraction.¹⁶⁶ This section articulates some of the concerns associated with including animals in the workplace.¹⁶⁷

A. Allergies and Zoonotic Pathogens

Allergies are a significant concern for employers.¹⁶⁸ Estimates indicate that about 12 percent of the general population has allergic

would not benefit from the presence of a dog.” *Id.* This study utilized an unfamiliar dog and suggested that having an employee’s own companion animal might have a more positive impact on stress. *Id.* at 261–62.

161. Foreman et al., *supra* note 142, at 504 (discussing limitations of research to date).

162. BRADSHAW, *supra* note 140, at 294 (discussing limitations in research but that an animal may serve as “an enabler of *human* connection”); Barker, *supra* note 149, at 25–27.

163. *See infra* notes 164–255 and accompanying text (discussing concerns of employers).

164. LIZ PALIKA & JENNIFER FEARING, *DOGS AT WORK: A PRACTICAL GUIDE TO CREATING DOG-FRIENDLY WORKPLACES* 31–39 (2008).

165. *See infra* notes 164–354 and accompanying text (discussing possible concerns and mitigation of risks).

166. BANFIELD, *supra* note 21, at 3. Human resources decision-makers are also concerned about complaints from employees and difficulty in implementation of a pet-friendly policy. *Id.*

167. *See infra* notes 164–354 and accompanying text (discussing possible concerns and mitigation of risks); *see also supra* notes 35–137 and accompanying text (discussing how to avoid legal liability for violating anti-discrimination laws).

168. Foreman et al., *supra* note 142, at 504.

sensitization to dogs and cats.¹⁶⁹ Because of the ease of transmitting allergens—for example on clothes—it is not surprising that even without the actual presence of an animal, the presence of pet allergens in public places, such as office buildings, has been called “ubiquitous.”¹⁷⁰ In addition to allergies, employers may also be concerned with diseases attributable to the presence of animals in the workplace.¹⁷¹

Employers may be concerned with the possible transmission of zoonotic diseases.¹⁷² Zoonotic diseases, which are also known as zoonoses, are infections that humans and animals can share.¹⁷³ Because a wide variety of zoonotic diseases exists, this Article only highlights some diseases of potential concern.¹⁷⁴ There are parasitic, bacterial, viral, and fungal diseases that are zoonotic.¹⁷⁵ Zoonotic parasitic diseases can be transmitted by worms or mites.¹⁷⁶

169. Sharon K. Ahluwalia et al., *Indoor Environmental Interventions for Furry Pet Allergens, Pest Allergens, and Mold: Looking to the Future*, 6 J. ALLERGY CLINICAL IMMUNOLOGY PRAC. 9, 10 (2018) (reporting on allergic sensitivity); AM. ACAD. OF ALLERGY ASTHMA & IMMUNOLOGY, THE TRUTH ABOUT PET ALLERGIES, <https://bit.ly/1fSAvWR> [<https://perma.cc/9LZS-CDP8>] (reporting that for persons with allergies, approximately ten percent are allergic to animals).

170. Ahluwalia et al., *supra* note 169, at 10.

171. *Infra* notes 172–86 and accompanying text (analyzing issues relating to the transmission of zoonotic pathogens).

172. Jason Stull, *Pets and Immunocompromised Individuals*, in COMPANION ANIMAL ZOOSES 299, 299 (J. Scott Weese & Martha B. Fulford eds., 2011) (discussing the increased risk of certain zoonotic diseases in individuals who are immunocompromised but acknowledging any human can be at risk).

173. *Zoonotic Diseases*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://bit.ly/2sAhPfF> [<https://perma.cc/U54N-DUCX>].

174. See Peter M. Rabinowitz & Lisa A. Conti, *Zoonoses*, in HUMAN-ANIMAL MEDICINE: CLINICAL APPROACHES TO ZOOSES, TOXICANTS AND OTHER SHARED HEALTH RISKS 105, 105–298 (2010) (setting forth information on the wide range of zoonotic diseases for all types of animals); Frans van Knapen & Paul Overgaauw, *Dogs and Transmission of Infection to Man*, “Respected Member of the Family?,” in ZOOSES—INFECTIONS AFFECTING HUMANS AND ANIMALS 575, 576–78 (Andreas Sing ed., 2015) (discussing the variety of dog zoonoses and the difficulty in determining the attribution to dogs and the associated human health risks); Andreas Sing, *Cat-Related Zoonoses: Killing You Softly with Feces and Fleas*, in ZOOSES—INFECTIONS AFFECTING HUMANS AND ANIMALS 587, 589–90 (Andreas Sing ed., 2015) (discussing zoonotic pathogens associated with cats). Rabinowitz & Conti also note that “many animal diseases currently are not believed to pose a threat to humans” and list some of those diseases. See Rabinowitz & Conti, *supra*, note 174, at 106.

175. See generally J. SCOTT WEESE & MARTHA FULFORD, COMPANION ANIMAL ZOOSES (2011) (dividing zoonoses into these categories).

176. J. Scott Weese et al., *Parasitic Diseases*, in COMPANION ANIMAL ZOOSES 3, 8, 36–40 (2011) [hereinafter Weese, *Parasitic Diseases*] (discussing infections caused by mites and worms). For purposes of this Article, the common names of the possible organisms and diseases are used. The references in the footnotes may also provide the technical terms. See also Jerry Jacob & Bennett Lorber, *Diseases Transmitted by Man’s Best Friend: The Dog*, in INFECTIONS OF

Flea infestation, as “the most common ectoparasitic infection in dogs and cats,” is a concern.¹⁷⁷ The impact of flea infestation on human health can range from no consequences to the transmission of serious pathogens.¹⁷⁸

Although, companion animals have a large bacterial microflora, “a large percentage of potential pathogens are quite rare causes of disease.”¹⁷⁹ For example, although *Salmonella* infection, which is also known as Salmonellosis, often derives from contaminated food products, a small number of cases involve contamination from pets and their food.¹⁸⁰

Risk of viral zoonoses in connection with companion animals is very rare in developed countries.¹⁸¹ Rabies is an example of a viral disease of which there is a very low risk in the United States.¹⁸²

LEISURE 111, 119–27 (David Schlossberg ed., 5th ed. 2016) (discussing parasitic infections and stating “autopsy data have shown that more than 50% [of dogs] are infested with one or more such [intestinal] parasites”).

177. Weese, *Parasitic Diseases*, *supra* note 176, at 26; *see infra* note 305 and accompanying text (discussing how to reduce the likelihood of a flea infestation).

178. *See* Weese, *Parasitic Diseases*, *supra* note 176, at 26. Flea infestations can also cause skin irritation in humans. *Id.* Note that though finding ticks on pets can indicate the presence of ticks in the environment, the “incidence of intrahousehold transmission is unknown and probably low.” *Id.* at 58.

179. J. Scott Weese & Martha B. Fulford, *Bacterial Diseases*, in *COMPANION ANIMAL ZONOSSES* 109, 109 (2011) [hereinafter Weese & Fulford, *Bacterial Diseases*] (discussing bacterial pathogens in companion animals). Most of the human illness associated with zoonotic bacterial pathogens can be attributed to a small percentage of these pathogens. *Id.*; *see also* Jacob & Lorber, *supra* note 176, at 114–19 (discussing bacterial zoonotic infections associated with dogs).

180. *See* Weese & Fulford, *Bacterial Diseases*, *supra* note 179, at 184 (“Outbreaks of human and pet salmonellosis have been associated with contact with contaminated dry pet foods.”). Although “[c]oncerns are also present about exposure to *Salmonella* from raw pet food diets . . . human infections have not been documented.” *Id.* *But see* van Knapen & Overgaaauw, *supra* note 174, at 580–81 (analyzing concerns with feeding dogs a raw meat diet and recommending dogs living with at-risk populations not be fed such a diet). *See also* Rebecca J. Huss, *Hounds at the Hospital, Cats at the Clinic: Challenges Associated with Service Animals and Animal-Assisted Interventions in Healthcare Facilities*, 40 HAWAII L. REV. 53, 106–08 (2018) [hereinafter Huss, *Hounds at the Hospital*] (discussing the controversy over the potential risks of a raw food diet). Exposure to household pets associated with salmonellosis cases usually is attributed to children handling reptiles or amphibians. Ellie J.C. Goldstein & Fredrick M. Abrahamian, *Diseases Transmitted by Cats*, in *INFECTIONS OF LEISURE* 133, 141 (David Schossberg ed., 2016).

181. J. Scott Weese & Martha B. Fulford, *Viral Diseases*, in *COMPANION ANIMAL ZONOSSES* 241, 241 (2011) [hereinafter Weese & Fulford, *Viral Diseases*]; *see also* *Rabies in the U.S.*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter CDC, *Rabies*], <https://bit.ly/2BaJRjK> [<https://perma.cc/J63N-CTEU>] (reporting that deaths in the United States related to rabies “declined from more than 100 annually at the turn of the century to one or two per year in the 1990’s”).

182. Weese & Fulford, *Viral Diseases*, *supra* note 181, at 259. The reported number of cats diagnosed with rabies is higher than dogs in the United States. *Id.*

The few recent human cases of rabies in the United States were attributed to bat variants rather than companion animals.¹⁸³ The most common type of zoonotic fungal disease is ringworm.¹⁸⁴ Because of the likelihood of transmission of this fungus, it may be necessary to treat both the humans and animals in a workplace if there is an infection.¹⁸⁵

Although the specter of zoonotic disease transmission can be disconcerting, the risks to humans interacting with animals is likely low with both appropriate monitoring and treatment of any workplace animals as well as humans taking reasonable precautions.¹⁸⁶

B. *Injuries to Humans and Legal Liability*

Although a full discussion of the issue of animal bites is beyond this Article's scope, this subsection briefly discusses the topic and addresses ways to minimize potential liability.¹⁸⁷ According to the Center for Disease Control and Prevention (CDC), about 4.5 million people in the United States are bitten by dogs each year.¹⁸⁸ The CDC also reports approximately one in five people bitten by a dog require medical attention.¹⁸⁹ Adults are less likely than chil-

(reporting the number of reported cases in the United States in 2008 and attributing the lower rate of rabies in dogs to the laws mandating dogs' vaccination).

183. *Id.* (reporting on the three human cases in 2002 and two human cases in 2008); see also Jesse D. Blanton & Ryan M. Wallace, *The Ancient Curse: Rabies, in* INFECTIONS OF LEISURE 235, 241 (David Schlossberg ed., 5th ed. 2016) (reporting "only [48] people are known to have acquired rabies in the United States from 1984 through 2014" and "[o]nly two cases of human rabies acquired in the United States since 1980 have been attributable to domestic animals"); Goldstein & Abrahamian, *supra* note 180, at 143 ("[D]omestic animals account for less than ten percent of all rabid animals.").

184. J. Scott Weese & Martha B. Fulford, *Fungal Diseases, in* COMPANION ANIMAL ZONOSSES 275, 278 (2011) [hereinafter Weese & Fulford, *Fungal Diseases*] (stating ringworm is "considered by some to be the most common zoonotic disease in the world").

185. *Id.* at 281.

186. *Infra* notes 298–306 and accompanying text (discussing how to minimize risks of zoonotic disease in the workplace).

187. See *infra* notes 256–354 and accompanying text (discussing ways to limit potential risks and liability); see generally Martha B. Fulford, *Pet Bites, in* COMPANION ANIMAL ZONOSSES 311, 311–14 (2011) (discussing dog and cat bites generally and prevention); Jacob & Lorber, *supra* note 176, at 112–14 (discussing dog bites and prevention).

188. Dogs, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://bit.ly/2nbvOTT> [<https://perma.cc/MUP3-U85P>].

189. *Preventing Dog Bites*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter CDC, *Preventing Dog Bites*], <https://bit.ly/2sf2BNf> [<https://perma.cc/3C3E-UFXZ>]. The Insurance Information Institute reports on homeowner insurance liability claims relating to dog bites. See *Spotlight On: Dog Bite Liability*, INS. INFO. INST. (Apr. 3, 2017), <https://bit.ly/2wAvVyn> [<https://perma.cc/7LLH-XGPV>]. According to the Insurance Information Institute, the number of liability claims

dren to be bitten by dogs.¹⁹⁰ Over half of bites occur with dogs who are familiar to the person injured and occur at home.¹⁹¹ The CDC does not provide any more detailed breakdown of the locations of the bites; however, given the cases referenced in the discussion of liability below, at least some incidents occur at workplaces.¹⁹² Adult men are more likely than adult women to be the recipient of a dog bite.¹⁹³

Humans are less likely to be bitten by a cat than a dog.¹⁹⁴ Historical estimates of the percentage of animal bites caused by cats resulting in wounds range from five percent to 20 percent.¹⁹⁵ Women are more likely than men to be bitten by cats.¹⁹⁶ Cat bites can cause deeper puncture wounds compared to dogs because of cats' narrow sharp teeth.¹⁹⁷ Cat bites also have a higher risk of causing soft-tissue abscesses and infection.¹⁹⁸ Seventy percent of the wounds caused by cats occur from scratches.¹⁹⁹ Cat scratches that break the surface of a person's skin can also become infected.²⁰⁰ Any interaction with animals in the workplace could re-

relating to dog bites increased 2.2 percent from 2016 to 2017, with homeowner insurers paying out over \$686 million for those claims in 2017. *Id.*

190. *Id.*

191. *Id.*

192. *Infra* notes 209–51 and accompanying text (referencing cases involving liability for bites at workplaces).

193. CDC, *Preventing Dog Bites*, *supra* note 189.

194. See Robert Ellis & Carrie Ellis, *Dog and Cat Bites*, 90 AM. FAMILY PHYSICIAN 239, 239 (2014).

195. See *id.*; Richard L. Oehler et al., *Bite-Related and Septic Syndromes Caused by Cats and Dogs*, 9 LANCET INFECTIOUS DISEASES 439, 439 (2009).

196. Oehler et al., *supra* note 195, at 439; Peter M. Rabinowitz & Lisa A. Conti, *Infectious Disease Scenarios*, in HUMAN-ANIMAL MEDICINE: CLINICAL APPROACHES TO ZOOSES, TOXICANTS AND OTHER SHARED HEALTH RISKS 299, 323 (2010) [hereinafter Rabinowitz & Conti, *Infectious Disease*] (reporting 59 percent of cat bites occur to females).

197. Oehler et al., *supra* note 195, at 440.

198. *Id.*; Jacob & Lorber, *supra* note 176, at 113 (reporting that the risk of infection for dog bites is “considerably lower than cat bites, and infection rates [for dog bites] are generally reported in the range of 3–18 percent, with a mean of about 5 percent”); see also Blanton & Wallace, *supra* note 183, at 235–50 (discussing rabies and its prevention). The rabies virus transmits from a carrier through open cuts or wounds. Blanton & Wallace, *supra* note 183, at 242, 248–49 (discussing the deadly consequences of rabies, why treatment generally occurs if there is a risk of infection and providing examples of when preventive treatment has occurred); see *supra* notes 181–83 and accompanying text (discussing the issue of rabies in the context of zoonotic diseases).

199. Rabinowitz & Conti, *Infectious Diseases*, *supra* note 196, at 323.

200. *Cat-Scratch Disease*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://bit.ly/2gIkWv7> [<https://perma.cc/5MFP-G3DJ>] (discussing the infection process for cat-scratch disease (*Bartonella henselae* infection)).

sult in a bite or scratch.²⁰¹ However, even individuals not intending to interact with an animal in the workplace can be injured.²⁰²

The presence of an animal at a workplace can be a fall hazard.²⁰³ A significant percentage of non-fatal injuries in the United States are caused by falls.²⁰⁴ Although it appears that there has not been a published comprehensive study regarding fall-related injuries attributed to animals in workplaces, a study assessing fall-related injuries in home environments found “[n]early 7.5 times as many injuries involved dogs . . . than cats.”²⁰⁵ A significant percentage of the falls occurred while the dog was being walked, although 8.8 percent of the falls were attributed to tripping over a related item such as a toy or food bowl.²⁰⁶ The potential for injuries can be alarming; however, as discussed below, depending on how animals are included in a workplace environment, the risk of injury can be minimized.²⁰⁷

Depending on the state law, the possibility of liability based on tort claims for injuries caused by animals varies.²⁰⁸ The issue of possible liability for injuries caused by animals in a business setting is not new.²⁰⁹ Because state laws use different approaches, a full

201. See *supra* notes 188–202 and accompanying text (discussing bites and scratches generally).

202. See *infra* notes 203–06 and accompanying text (discussing injuries from falls).

203. Cf. Judy A. Stevens et al., *Dogs and Cats as Environmental Fall Hazards*, 41 J. SAFETY RES. 69, 69 (2010) (discussing the presence of animals generally, not specifically in a workplace).

204. See *id.* at 69 (“[F]alls are the leading cause of non-fatal injuries in the United States . . .”).

205. See *id.* at 70. “[F]emales were 2.1 times more likely than males,” and fall rates generally increased with age. *Id.* at 70–72. The exception to the increase in fall rates with age is the 9-to-14- and 15-to-24-year age groups, which had the highest rates of falls. *Id.*

206. *Id.* at 72.

207. *Infra* notes 256–354 and accompanying text (discussing ways risks can be reduced in a workplace environment).

208. See generally STUART M. SPEISER, *THE AMERICAN LAW OF TORTS* §§ 21:31, 21:50 (1990 & Supp. 2011) (discussing injuries caused by animals generally and liability for injuries caused by dogs); MARY J. RANDOLPH, *EVERY DOG’S LEGAL GUIDE: A MUST-HAVE BOOK FOR YOUR OWNER* 207–30 (2012) (analyzing state provisions regarding injuries caused by dogs). Practitioners are encouraged to research the applicable state law to determine the risk for the inclusion of animals in the workplace. See *infra* notes 212–32 and accompanying text (discussing the possibility of a relevant statutory provision in addition to common law covering the issue).

209. See, e.g., *Goodwin v. E.B. Nelson Grocery Co.*, 132 N.E. 51 (Mass. 1921). In *Goodwin*, a customer was injured after she touched the grocery store owner’s cat’s paw after a scuffle involving the cat and the customer’s dog. *Id.* at 52. The court recognized that the owner of the store had an obligation to keep the premises in a reasonably safe condition for the use of its customers; however, it found

discussion of this issue is beyond the scope of this Article.²¹⁰ However, in general, injuries caused by animals can create liability under state laws.²¹¹ State statutes often include provisions governing liability for injuries caused by animals.²¹² Over half the states have adopted statutory provisions imposing strict liability for the owners²¹³ of animals that cause injuries.²¹⁴

Other state statutes codify the common law concept sometimes referenced as the “one-bite rule.”²¹⁵ Such statutory provisions generally do not require the animal (often a dog) to injure someone through a bite.²¹⁶ Instead, in order for liability to arise, often it is only necessary to prove the owner knows, or should have known, the animal was likely to cause an injury.²¹⁷

Depending on the circumstances, courts will consider a variety of behaviors to assess whether an owner knows or should know that the dog is likely to cause a particular injury.²¹⁸ A dog exhibiting threatening behavior towards people, such as growling and snapping, even without a history of biting, might be sufficient to provide

the customer was negligent and the owner of the cat did not have knowledge of the cat’s viciousness. *Id.* at 52–53. The cat’s previous behavior of pulling the fiber from the stocking of a child in the store “was insufficient to warrant a finding of . . . knowledge of characteristics likely to develop into an unprovoked attack of a violent nature.” *Id.* at 52.

210. It is also common for states to require the reporting of incidents where an animal has injured a human. See Rebecca J. Huss & Aubrey H. Fine, *Legal and Policy Issues for Classrooms with Animals*, in *HOW ANIMALS HELP STUDENTS LEARN: RESEARCH AND PRACTICE FOR EDUCATORS AND MENTAL-HEALTH PROFESSIONALS* 27, 29–30 (Nancy R. Gee et al. eds., 2017). This reporting may require extensive information and can trigger other ramifications such as the potential an animal may be deemed dangerous. *Id.*

211. See, e.g., DAN B. DOBBS ET AL., *THE LAW OF TORTS* § 439 (2d ed. 2011) (discussing liability for injuries by animals). The cases referenced in this Article illustrate some of these common issues in incidents occurring in a work environment.

212. See *RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM* § 23 (AM. LAW INST. 2010).

213. See *infra* notes 233–37 and accompanying text (discussing the issue of the definition of owners). It is not necessary to be the legal owner of the animal in all states. RANDOLPH, *supra* note 196, at 226–28. The law has developed to provide for “keepers,” “possessors,” or “harborers” of dogs to be liable for damages. See *infra* notes 233–37 and accompanying text (analyzing expansion of liability to persons who are not owners).

214. RANDOLPH, *supra* note 208, at 208 (setting forth a table with strict liability statutes in states such as California, Indiana, and New Jersey, and including references to provisions impacting such liability).

215. See *id.* at 213–16 (providing a list of states with a one-bite rule, including Arkansas, Nevada, and Oregon).

216. *Id.*

217. *Id.*

218. See *id.* at 214–15.

notice to support liability.²¹⁹ Barking alone may or may not be notice of the likelihood of injury depending on the circumstances.²²⁰ For example, a dog barking when the doorbell rings at a home—or presumably a business—without other threatening behavior might not be sufficient to support knowledge.²²¹

However, even behavior of a dog that may not indicate fear or aggression could support liability depending on the injury.²²² An example of this type of behavior is a dog who regularly jumps on people.²²³ If such a dog knocks over someone, the owner might be found liable.²²⁴ In contrast, knowledge that a dog has knocked over a child in the past may not be sufficient to support liability if the dog subsequently bites an adult.²²⁵

Animal bite statutes generally contain exceptions and allow for affirmative defenses.²²⁶ Although most of these defenses would likely be inapplicable in a workplace, the assumption of risk defense might theoretically be applicable in states that recognize it as

219. RANDOLPH, *supra* note 208, at 215.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *See* Blake v. Cty. of Wyoming, 147 A.D.3d 1365, 1366 (N.Y. App. Div. 2017) (finding that a county did not have constructive or actual knowledge of a dog's vicious propensities when an adult volunteer was bitten, even though the shelter may have been told the dog had previously knocked over a child). This case also found that a prior incident reported to a different department would not be knowledge imputed to the shelter. *Id.*

226. RANDOLPH, *supra* note 208, at 219–24. In addition to affirmative defenses relating to liability for the bite, the application of a state workers' compensation system may be the exclusive remedy of an employee. *See, e.g.,* Wheeler v. Couret, 182 F. Supp. 2d 330, 335 (S.D.N.Y. 2001) (finding that a veterinarian and office manager were co-employees, thus the office manager was precluded under New York law from suing the veterinarian when she was eligible and received benefits under the state workers' compensation statute); Smith v. Elick, No. 08-0728, 2009 WL 142545, at *1 (Ia. Ct. App. Jan. 22, 2009) (affirming a district court's decision that workers' compensation statute "is the exclusive remedy against an employer or co-employee for employees who are injured by dog bite within the scope of their employment"); Shadid v. K 9 Univ., LLC, 2017 OK 45, ¶¶ 5–7, 402 P.3d 698, 700 (finding an employee could not pursue a tort action even though the employer was the owner of the dog that bit the employee); 1912 Hoover House Rest. v. Workers' Comp. Appeal Bd., 103 A.3d 441, 450 (Pa. Commw. Ct. 2014) (upholding workers' compensation judge's finding that an employee petting a co-worker's dog while on a smoke break was still in the course and scope of employment at the time of injury). *But see* Tischer v. Taylor, No. KNLCV156024237S, 2016 WL 2602315, at *3–5 (Conn. Super. Ct. Apr. 8, 2016) (denying summary judgment motion in a case where another employee's dog bit an employee even though the employee had already filed and received workers' compensation).

an affirmative defense.²²⁷ An example is *Benton v. Aquarium, Inc.*²²⁸ In *Benton*, a truck driver acknowledged he observed signs on a warehouse door stating, “guard dog on duty” and “trespassers will be eaten.”²²⁹ The truck driver “not truly believing the signs . . . knocked on the door, heard muffled voices, opened the door, walked inside, and was attacked by the dog.”²³⁰ Even though there was an issue of the dog’s vicious propensity, a directed verdict in favor of the business was affirmed.²³¹ The court cited cases that found that people who disregarded animal warning signs assumed the risk of injury.²³²

Further, employers may be concerned with potential third-party liability—under some state laws, legal ownership of an animal is not required to establish legal liability.²³³ Some state laws hold “keepers,” “possessors,” or “harborers” of dogs liable for damages.²³⁴ A key concept to determine whether a non-owner is liable

227. RANDOLPH, *supra* note 208, at 221–22. Examples of affirmative defenses unlikely to be applicable in a workplace setting include the victim was breaking the law or trespassing. *Id.* Certainly, in businesses where there is regular contact with animals there is a stronger argument that persons have assumed the risk. *E.g.*, *Priebe v. Nelson*, 140 P.3d 848, 850 (Cal. 2006) (applying the “veterinarian’s rule” to bar a kennel worker’s statutory strict liability claim). This is an application of “primary assumption of risk,” which focuses on the nature of the activity and, for example, exempts persons contracting with veterinarians from liability if a dog bites during treatment. *Id.* at 854–55. The *Priebe* case discusses the application of this concept by other states as well. *Id.* at 856–58. *See also* *Carpetiero v. Estate of Pocknett*, No. A-1829-16T4, 2018 WL 3150024 (N.J. Super. Ct. App. Div. June 28, 2018) (discussing exceptions to New Jersey law in a case involving a groomer); *Hayes v. Mia’s Bathhouse for Pets*, 65 N.Y.S.3d 621, 622 (App. Term. 2017) (finding that although a dog “groomer may have assumed the risk of being bitten by a dog while performing her services, she did not assume the concealed or unreasonably increased risk of [the employer’s] negligent failure to screen for proper immunization paperwork . . . in violation of [employer’s] express promise to [the groomer]”).

228. *Benton v. Aquarium, Inc.*, 489 A.2d 549 (Md. Ct. Spec. App. 1985).

229. *Id.* at 549. There were also drawings on the signs indicating dogs, including one with a “mouth wide open as it sneeringly displayed a grid of sharp, large canines.” *Id.*

230. *Id.* at 550.

231. *Id.* at 551. The *Benton* court found that “Mr. Benton voluntarily left his place of safety and crossed the threshold of danger that he should have known and appreciated.” *Id.* at 553.

232. *Id.* at 552.

233. RANDOLPH, *supra* note 208, at 226–28.

234. *Id.*; *see, e.g.*, *Auster v. Norwalk United Methodist Church*, 943 A.2d 391 (Conn. 2008) (analyzing “keeper” language in a case where a dog, owned by an employee, bit a visitor). The *Auster* court agreed with the appellate court’s interpretation of “keeper,” stating that “a person will not be deemed a keeper of a dog under [the Connecticut statute] unless that person exercises control over the dog ‘in a manner similar to that which would ordinarily be exerted by the owner.’” *Id.* at 397 (quoting *Auster v. Norwalk United Methodist Church*, 894 A.2d 329, 333

is whether such person had control over the animal at the time of the injury.²³⁵ The focus is not the “relationship between the alleged keeper and the dog’s owner,”²³⁶ but rather the actual control or caretaking of the dog.²³⁷

Even if recovery is not possible under a state statutory provision, an individual may have the option to sue based on a theory of common law negligence.²³⁸ Successful recovery of damages in a common law negligence action relating to dog bites generally requires proof that, under the circumstances, the injury was foreseeable and the owner of the animal did not exercise reasonable

(Conn. 2006)). The “minimum regulation” by the church in this case of limiting where and when the employee could take the dog outside with all other activities relating to the dog (including the dog’s care) was insufficient to establish that the church should be considered a keeper of the dog. *Id.* at 395. An older Connecticut case also held an employer would not be deemed the keeper of an employee’s dog, when the employee brought the dog to work. *Falby v. Zarembski*, 602 A.2d 1, 3–4 (Conn. 1992). In the *Falby* case, an employee brought his dog to a work site and the court found “control over the premises where the dog inflicted the injuries or over Zarembski, by virtue of the employment relationship, did not convert [the employer] into a keeper of Zarembski’s dog while it was present at the worksite.” *Id.* at 4. Note that being deemed a “keeper” of an animal may also preclude such person from successfully suing the legal owner of the animal for damages. *See Clawson v. LaValley*, No. CV176011664S, 2018 WL 1936526, at *6 (Conn. Super. Ct. Mar. 29, 2018) (denying a motion for summary judgment because there was an issue of fact whether employee of pet sitting service was a keeper of a dog); *Crenshaw v. Fleming*, No. CV086001719, 2009 WL 3644658, at *3–4 (Conn. Super. Ct. Sept. 18, 2009) (denying a motion for summary judgment in a case involving a kennel worker bitten by a dog). The kennel worker in the *Crenshaw* case argued that she should not be considered the dog’s keeper because her responsibility was limited to grooming the dog. *Crenshaw*, 2009 WL 3644658, at *2.

235. RANDOLPH, *supra* note 208, at 226–28; *see also* *Consiglio v. Consiglio*, No. CV044000701S, 2006 WL 1359638, at *4 (Conn. Super. Ct. 2006) (granting a motion for summary judgment and finding “[w]hile the corporate defendant could have prohibited its officers, employees and directors from bringing their family pet to their place of employment or could have otherwise controlled the dog, there is no evidence presented that it actually exercised any form of control over the pet whatsoever”). In the *Consiglio* case, the court distinguished between actions taken by individuals in their corporate capacity and actions involving the care of the dog as a family pet. *Id.* at *3.

236. *Crenshaw*, 2009 WL 3644658, at *3.

237. *Auster*, 943 A.2d at 398.

238. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 23 (AM. LAW INST. 2010); *e.g.*, *Andrus v. L.A.D. Corp.*, 03-1488, p. 7 (La. App. 5 Cir. 5/26/04); 875 So. 2d 124, 130 (referencing after strict liability analysis, a court should consider a negligence cause of action). In *Andrus*, the court dismissed the plaintiff’s case after determining the evidence did not support the claim that the owner “knew or should have known that it was possible for the dog to escape.” *Id.* at 130–31. *See also* *Ball v. Fourment*, No. 331670, 2017 WL 694683, at *1–2 (Mich. Ct. App. Feb. 21, 2017) (analyzing alternative claims of liability under common law negligence and the dog bite statute).

care.²³⁹ In the case of an employer, foreseeability requires that the employer know or should know of the dangerous propensities of an animal.²⁴⁰ However, businesses do not owe a duty to warn invitees of open and obvious dangers on the premises.²⁴¹ Without knowledge that an animal is a danger to others, an employer may rely on that doctrine as a defense to a negligence claim.²⁴² Other defenses, such as comparative negligence, may also be applicable.²⁴³ If an employee's act is within the scope of employment, an employer may be vicariously liable.²⁴⁴ An employee's act can fall within the scope of employment if the act furthers an employer's business or is in the interest of the employer's business, even if the act is not consistent with an employer's instructions.²⁴⁵

239. RANDOLPH, *supra* note 208, at 215.

240. *E.g.*, *Tischer v. Taylor*, No. KNLCV156024237S, 2016 WL 4150591, at *4 (Conn. Super. Ct. July 6, 2016) (denying summary judgment motion for employer-defendant in a case where one employee's dog bit another employee, and discussing the need for knowledge or constructive notice in order to establish liability); *Martin v. Gulfstream Metal Plating, Inc.*, 977 So. 2d 688, 691 (Fla. Dist. Ct. App. 2008) (explaining that for a corporation to be liable for the acts of its employees, there must be knowledge of the keeping of an animal on the premises as well as knowledge of viciousness of the animal); *McKee v. J&J Otsego Props. Inc.*, 277 A.D.2d 787, 788–89 (N.Y. App. Div. 2000) (holding the “mere presence of a dog in a tavern” is not *prima facie* evidence of negligence and “[g]enerally, a plaintiff may not recover for injuries sustained in an attack by a dog without establishing that the animal had vicious propensities and that defendant knew or should have known of such propensities”).

241. RESTATEMENT (SECOND) OF TORTS § 343A (AM. LAW INST. 1965) (providing no obligation to warn invitees of known or obvious dangers unless the possessor of the land should anticipate harm); *Smrtka v. Boote*, 2017-Ohio-1187, 88 N.E.3d 465, ¶ 13 (reiterating that “the open and obvious doctrine is a complete bar to any negligence claim”).

242. *Id.* ¶ 20 (holding chiropractor did not owe a duty to patient who was bitten by dog (who was another patient) in his office).

243. *Terry Plumbing & Home Servs., Inc. v. Berry*, 900 So. 2d 581, 584 (Fla. Dist. Ct. App. 2004) (applying comparative negligence defense when plumbing company's customer was bitten by plumber's dog).

244. *See, e.g.*, *Ball v. Fourment*, No. 331670, 2017 WL 694683, at *2 (Mich. Ct. App. Feb. 21, 2017). It is not necessary to find that the employer is at fault for liability of the employee to be imputed to the employer under vicarious liability. *Id.* Note that state statutory provisions relating to dog bites (versus common law negligence claims) may not allow for vicarious liability for employers. *See, e.g.*, *Croley v. Moon Enters., Inc.*, 2001-Ohio-4366, 770 N.E.2d 148, ¶ 11; *see also supra* notes 233–37 and accompanying text (discussing the possibility that an employer could be found liable based on the theory the employer is a keeper, possessor, or harbinger of a dog).

245. *Ball*, 2017 WL 694683, at *2. In the *Ball* case, the court found the evidence supported vicarious liability, citing to facts which included the employees' use of their “dog to demonstrate . . . a pinch collar to plaintiff in an effort to convince her to buy such a product.” *Id.* at *6. The interaction with the customer was considered within the scope of employment. *Id.* *See also* *Canney v. Strathglass Holdings, LLC*, 2017 ME 64, ¶¶ 16–17, 159 A.3d 330, 334 (finding an em-

There are also cases where businesses have been sued for allowing customers' dogs on the premises when another invitee is injured.²⁴⁶ Although a business "is not an insurer against injury of its customers," businesses have a duty to exercise ordinary care to prevent risks of harm to others that are unreasonable and foreseeable.²⁴⁷ For example, in *Braese v. Stinker Stores, Inc.*,²⁴⁸ the Supreme Court of Idaho found, when considering the issue generally, that there was "no evidence presented that allowing dogs on or in retail property created an unreasonable risk of harm to members of the public."²⁴⁹ However, courts are likely to consider the specific facts to determine whether there was an unreasonable risk of harm in allowing a particular dog in a workplace.²⁵⁰ As with dog bite liability generally, the question then becomes whether the business, through its employees, knew or should have known an animal had a dangerous propensity or was vicious.²⁵¹

C. Other Concerns

Employers may have other concerns about the impact of animals in the workplace including whether animals may be a distraction or impact productivity.²⁵² However, respondents in the

ployee was not acting within the scope of his employment when a tenant entered a private yard for purely recreational purposes); *Croley*, 2001-Ohio-4266, 770 N.E.2d 148, ¶ 11 (finding the dog was on the premises for the employee's convenience and not for the benefit of the business).

246. *E.g.*, *Braese v. Stinker Stores, Inc.*, 337 P.3d 602 (Idaho 2014) (affirming dismissal of suit by convenience store customer).

247. *Id.* at 604.

248. *Id.*

249. *Id.*

250. *Id.* After considering the issue of allowing dogs on the property generally, the *Braese* court considered the issue of whether allowing the dog at issue into the store created an unreasonable risk of harm. *See id.*

251. *Id.* at 605. Because there was no evidence that the employees knew or should have known the dog involved in the incident in the *Braese* case would jump on other customers, the court affirmed the judgment of the lower court dismissing the claim with prejudice. *Id.* at 603, 605. The manager in *Braese* testified she had "no reason to be concerned about [the dog] creating a problem in the store" and had previously instructed "employees to make customers take their dogs outside 'if they're uncontrollable, and especially if they're not on a leash.'" *Id.* at 605. Depending on the circumstances in which the dogs are kept—for instance, whether they were poorly treated or kept for security—a court may find a duty to warn of knowledge of dangerous propensities. *See, e.g.*, *Snyder v. Nat'l Parking Sys.*, No. 111990/01, 2004 WL 2480013, at *2–3 (N.Y. Sup. Ct. Oct. 4, 2004) (discussing knowledge of vicious propensities of guard dog); *Labaj v. Vanhouten*, 322 S.W.3d 416, 424 (Tex. App. 2010) (finding a duty to warn of aggressive guard dog who the owner chained, injured, and exposed to the elements).

252. PALIKA & FEARING, *supra* note 164, at 38–39 (discussing concerns of business owners including that animals can be a distraction or impact productivity); Kim Tracy Prince, *Pets in the Workplace: Is It a Good or Bad Idea?*, BUSI-

Banfield Survey who work in a pet-friendly workplace “overwhelmingly agree that allowing pets . . . [has] improved several factors,” such as increased productivity and improved work relationships.²⁵³ The Banfield Survey reported seven out of ten respondents believe a pet-friendly office would have a positive effect on workplace dynamics and employee morale.²⁵⁴ The ability to minimize the likelihood of issues associated with animals in the workplace is discussed in the following section.²⁵⁵

IV. MITIGATION OF RISKS

An employer should establish policies and procedures to minimize the possibility of injury and ensure that including animals in the workplace is a benefit rather than a burden.²⁵⁶ Issues can be divided into two basic categories.²⁵⁷ The first is to establish standards relating to the animals allowed in the workplace.²⁵⁸ The second focuses on the behavior of humans.²⁵⁹

A. *Issues Relating to Animals*

The decision about whether a workplace may permit a companion animal should be based on the unique nature of such animal.²⁶⁰

NESS.COM (Feb. 22, 2017), <https://bit.ly/2zUZzzQ> [<https://perma.cc/4C2C-EVUR>] (discussing issues if animals “are distracting or otherwise curb productivity”).

253. BANFIELD, *supra* note 21, at 2; *see also* APPA, Work, *supra* note 21 (reporting on survey participants who agreed that having companion animals at work “helps co-workers get along better” and “helps improve the relationship between managers and their employees”).

254. BANFIELD, *supra* note 21, at 2.

255. *See infra* notes 256–354 and accompanying text (discussing ways employers can minimize risks).

256. *See infra* notes 256–354 and accompanying text (discussing the mitigation of risks).

257. *See infra* notes 258–59 and accompanying text (discussing the categories of issues relating to animals versus issues relating to humans).

258. *See infra* notes 260–306 and accompanying text (discussing animals’ status and behavior).

259. *See infra* notes 309–54 and accompanying text (discussing human behavior and policies).

260. *See infra* notes 261–306 and accompanying text.

1. *Does It Benefit the Animal?*²⁶¹

Regardless of any legal obligation, employers should consider the potential impact on animals in a workplace.²⁶² One study suggested there are potential benefits for animals when they accompany their humans to work, given they were not separated for long

261. A robust discussion of the ethical issues relating to animals serving as service animals is beyond the scope of this Article. *See generally* Huss, *Hounds at the Hospital*, *supra* note 180, at 108–12 (discussing some ethical concerns involved in animal-assisted interventions); Huss, *Conundrum*, *supra* note 68, at 1563–67 (considering theoretical issues relating to animals generally and in the context of companion and assistance animals); Rebecca J. Huss, *Re-Evaluating the Role of Companion Animals in the Era of the Aging Boomer*, 47 AKRON L. REV. 497, 546–49 (2014) (discussing ethical issues relating to animal-assisted activities and service animals). There has been increased attention to ethical issues relating to companion and service animals in recent years, including animals participating in animal-assisted interactions. SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS: A POLITICAL THEORY OF ANIMAL RIGHTS* 140–42 (2011) (promoting a citizenship model and raising issues regarding the use of animal labor); JESSICA PIERCE, *RUN SPOT RUN: THE ETHICS OF KEEPING PETS* 61–64 (2016) (analyzing the ethics of using a living being as way to improve human health); Zenithson Ng et al., *Our Ethical and Moral Responsibility: Ensuring the Welfare of Therapy Animals*, in *HANDBOOK ON ANIMAL-ASSISTED THERAPY FOUNDATIONS AND GUIDELINES FOR ANIMAL-ASSISTED INTERVENTIONS* 267, 357 (Aubrey H. Fine ed., 4th ed. 2015) (discussing welfare issues relating to animals participating in animal-assisted interventions); Zipporah Weisberg, *Animal Assisted Intervention and Citizenship Theory*, in *PETS AND PEOPLE: THE ETHICS OF OUR RELATIONSHIPS WITH COMPANION ANIMALS* 218–33 (Christine Overall ed., 2017) (analyzing specific issues relating to the citizenship model's application to the animals involved in animal-assisted interventions). It is challenging to structure arguments when the ethics of human-animal relationships lack universal guidelines. Ng et al., *supra* note 261, at 366, 371–72 (providing an example of an instrument assessing the well-being of a dog participating in a therapy session but acknowledging the lack of precise criteria to guarantee animals' welfare). Practically speaking, given the role service animals and companion animals play in humans' lives, it appears unlikely that any theoretical ethical considerations will change, at least in the near future, the legal structure that ensures that humans decide whether animals will be part of a workplace environment. Huss, *Conundrum*, *supra* note 68, at 1563 (analyzing the current legal status of animals as property); Rebecca J. Huss, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQUETTE L. REV. 47, 52–71 (2002) (analyzing theories regarding the status of animals and ideas for change).

262. *See* Stewart & Strickland, *supra* note 160, at 262 (raising the issue of effects on nonhuman animals in the workplace given “most research investigating the human-animal bond has tended to focus on the benefits to humans, without adequate consideration of the effects on the nonhuman animals”); *see also* Norling & Keeling, *supra* note 21, at 158 (citing to a student report of one of the authors) (discussing a 2008 Swedish study that found “no evidence of dog welfare being compromised in an office type of workplace”).

periods of time from their “attachment figures.”²⁶³ However, relationships and working conditions vary significantly.²⁶⁴

It is important to consider whether the physical environment is appropriate for animals.²⁶⁵ Even if the physical premises is ideal, not every animal adapts well to a workplace environment, especially if the animal is confined to a small area or is required to interact with new people or animals regularly.²⁶⁶ An active dog, expected to stay quiet throughout a long period, may exhibit boredom and problematic behavior.²⁶⁷ Because dogs often do better with a routine, it may be stressful for a dog who is brought to the workplace only on occasion.²⁶⁸ Animals who are prone to escaping through open doors may be inappropriate for a facility where exits are used frequently.²⁶⁹ It is important to regularly assess whether the animal is benefiting from being brought to the work environment.²⁷⁰

2. *Should an Employer Limit Which Type of Animal a Workplace Allows?*

a. Species Restrictions

Because of the lack of a definition under the regulations for Title I of the ADA, multiple species of animals could theoretically act as service animals for employees in the workplace.²⁷¹ However, because of the ability of employers to choose among accommoda-

263. Stewart & Strickland, *supra* note 160, at 263.

264. *See id.* (recommending future research to “clarify the working conditions that would be beneficial to nonhuman animals”).

265. *See* Prince, *supra* note 252 (recommending against allowing animals if the work environment is noisy or hazardous).

266. *See* Matt Miller, *Don’t Bring Your Dog to Work*, SLATE (Aug. 15, 2016), <https://bit.ly/2bsz6w7> [<https://perma.cc/V4B3-JGKE>] (discussing issues that may arise when dogs are allowed at work). There may be a period of adjustment as animals may encounter things and people that are not otherwise part of their daily lives. Yuki Noguchi, *Who Let the Dogs In? More Companies Welcome Pets at Work*, NAT’L PUB. RADIO (Aug. 8, 2016), <https://n.pr/2FORO02> [<https://perma.cc/5428-ETND>].

267. *See* Miller, *supra* note 266 (citing to expert on possible behavioral issues).

268. *Id.* (reporting on concerns with dogs at workplace).

269. Maryann Hammers, *Cubicle Cats*, BEST FRIENDS MAG., Nov./Dec. 2012, at 30, 32 (on file with author) (discussing the need to match animals with the appropriate work setting).

270. *See* Miller, *supra* note 266 (discussing the need for people to “listen” to their animals as an animal “might be asking to stay at home”); *cf.* Huss, *Hounds at the Hospital*, *supra* note 180, at 109–12 (discussing the importance of determining whether therapy or service animals should be retired from active service).

271. *Supra* notes 47–78 and accompanying text (analyzing Title I and the definition of service animals).

tions and the undue hardship analysis, it is unlikely that the ADA would require employers to allow a non-domesticated species of animal in the workplace.²⁷²

Cats have been allowed at some workplaces in a variety of ways.²⁷³ Of course, cats may be allowed to accompany employees to work just like dogs.²⁷⁴ Cats can be trained and are used in animal-assisted interventions, so it is possible to incorporate them into a work environment.²⁷⁵ However, because it is estimated that people are twice as likely to be allergic to cats as dogs, it may be less feasible to include them in an indoor workspace.²⁷⁶

272. *Supra* notes 79–137 and accompanying text (analyzing cases regarding accommodations).

273. See, e.g., *A Different Kind of Home: Living the Good Life in a New York City Flower Shop*, BEST FRIENDS MAG., May/June 2018, at 14 (describing the adoption of a cat to serve as a flower shop's "resident cat"); *To Reduce Work Stress, Japan Firms Turn to Office Cats, Dogs and Goats*, JAPAN TIMES (May 5, 2017) (on file with author) (reporting on cats freely wandering through an office in Japan as well as other animals in the workplace).

274. *A Different Kind of Home*, *supra* note 273. Cf. BANFIELD, *supra* note 21 and accompanying text. As discussed above, the Banfield Survey found that dogs are more often allowed at the workplace than cats. See BANFIELD, *supra* note 21.

275. Cf. Huss, *Hounds at the Hospital*, *supra* note 180, at 69–70 nn. 90–96 and accompanying text (discussing the use of cats in animal-assisted interventions and an example of an evaluation to determine whether a cat is appropriate for such work). But cf. Rekha Murthy et al., *Animals in Healthcare Facilities: Recommendations to Minimize Potential Risks*, 36 INFECTION CONTROL & HOSP. EPIDEMIOLOGY 495, 502 (2015) (recommending that cats not be used for animal-assisted interventions in healthcare settings because cats "cannot be trained to reliably provide safe interactions with patients").

276. *Pet Allergies: Are You Allergic to Dogs or Cats?*, ASTHMA & ALLERGY FOUND. AM., <https://bit.ly/1QZVqMm> [<https://perma.cc/9ZZD-CNPE>] (referencing prevalence of cat allergies compared with dog allergies). A business may support a "community cat" colony on the premises. Laura Moss, *Putting Cats to Work*, BEST FRIENDS MAG., July/Aug. 2017, at 33, <https://bit.ly/2RWUD4z> [<https://perma.cc/Y3EA-BNRT>]; AM. BAR ASS'N, RESOLUTIONS WITH REPORTS TO THE HOUSE OF DELEGATES 102B (2017) [hereinafter ABA, RESOLUTION AND REPORT 102B], <https://bit.ly/2rzaTgp> [<https://perma.cc/N853-RMWV>]. The ABA adopted a resolution supporting the implementation of these programs in August 2017. See also Debra Cassens Weiss, *Trap-Neuter-Vaccinate-Return Programs for Community Cats Backed by ABA Delegates*, A.B.A. JOURNAL (Aug. 14, 2017), <https://bit.ly/2wIZFYf> [<https://perma.cc/JY5P-KYP2>]. Through these programs, cats are sterilized, provided food and water, and are monitored to ensure their ongoing health. ABA, RESOLUTION AND REPORT 102B, *supra* note 276. Companies ranging from Disneyland to breweries have established community cat colonies. *About*, CATS DISNEYLAND, <https://bit.ly/QnRTfV> [<https://perma.cc/665E-7UAP>] (describing the history and management of the colony at Disneyland); Linda Wilson Fucco, *Stray Cats Go to Work in Breweries and Barns*, PITTSBURGH POST-GAZETTE (Sept. 29, 2017), <https://bit.ly/2SLjDvn> [<https://perma.cc/9T3L-BQJD>] (describing programs placing cats at businesses including breweries). Shelters have established "working cat" or "barn-cat" programs specifically to place cat who may be human-avoidant in a variety of environments. Diane Kruzman, *These Feral Cats Aren't Put Down, They're Put to Work*, USA TODAY (July 12, 2017), <https://>

b. Breed Restrictions

As discussed above, in the context of the application of ADA Titles II and III, the exclusion of a service dog must be based on an individualized determination of whether the animal poses a direct threat to the safety of others.²⁷⁷ In interpreting Titles II and III of ADA and the FHA, government agencies have determined that excluding animals solely based on their breed is inconsistent with those federal laws.²⁷⁸ In particular, the DOJ notes that breed restrictions “have the unintended effect of screening out the very breeds of dogs that have successfully served as service animals for decades.”²⁷⁹ Similarly, HUD guidance states “[b]reed . . . limitations may not be applied to an assistance animal.”²⁸⁰ In the absence of a change in policy by the DOJ and HUD, it would seem likely that the EEOC would follow the lead of these other federal agencies in not allowing an employer to prohibit a service dog based merely on breed.²⁸¹

bit.ly/2teMGdL [https://perma.cc/82PK-MVCK] (describing programs placing cats with businesses); Moss, *supra* note 276, at 35–37 (discussing programs).

277. *Supra* notes 132–34 and accompanying text.

278. Huss, *Conundrum*, *supra* note 68, at 1574–87. The DOJ’s guidance to the ADA Title II and Title III regulations states:

The Department does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks. Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others.

Title II Regulation Guidance, *supra* note 132, at 77, 81, 91; Title III Regulation Guidance, *supra* note 133, at 83, 86, 88 (implementing the final regulations for Title II and Title III of the ADA and providing guidance on changes in the regulations); *see also* U.S. DEP’T OF JUSTICE, FREQUENTLY ASKED QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA 5 (July 20, 2015), <https://bit.ly/2jK9Uc9> [https://perma.cc/8PMY-F68J] (“The ADA does not restrict the type of dogs breeds that can be service animals. . . . [and a] service animal may not be excluded based on the assumptions or stereotypes about the animal’s breed or how the animal may behave.”).

279. Title II Regulation Guidance, *supra* note 132, at 81; Title III Regulation Guidance, *supra* note 132, at 87 (citing to jurisdictions with laws restricting German Shepherds). The DOJ guidance also cites to regulations that prohibit animals over a certain weight that have the effect of restricting breeds even in the absence of an express breed ban. Title II Regulation Guidance, *supra* note 132, at 77, 81, 191; Title III Regulation Guidance, *supra* note 132, at 86, 87.

280. HUD, FHEO NOTICE, *supra* note 63, at 3; *see also* Huss, *Conundrum*, *supra* note 68, at 1584–87 (analyzing cases utilizing HUD guidance relating to specific breeds of dogs acting as assistance animals).

281. *See supra* notes 278–80 and accompanying text (discussing DOJ and HUD policies).

Because employers are not obligated to allow companion animals at all, they could limit the breeds allowed on the premises.²⁸² However, if the goal of the employer is to reduce the likelihood of incidents involving the dogs, such a policy would be counterproductive because there is no evidence that such a policy improves public safety.²⁸³ Numerous national animal advocacy organizations have policies that oppose breed-discriminatory ordinances.²⁸⁴ Other organizations focused on animals and public health also oppose laws that deem animals dangerous based on appearance or breed versus the animals' actual behavior.²⁸⁵ For example, the American Veterinary Medical Association opposes breed-discriminatory legislation and instead calls on non-breed-specific laws that address irresponsible owners.²⁸⁶ Even the American Bar Association has a policy calling for the enactment of breed-neutral dangerous-dog/reckless-owner laws.²⁸⁷ In addition, it is impractical and difficult to determine the breed of many dogs based solely on appearance.²⁸⁸

In response to research regarding the ineffectiveness of breed-discriminatory ordinances and the efforts of organizations opposing them, several states have passed legislation limiting local jurisdictions' abilities to enact breed-discriminatory ordinances.²⁸⁹ Absent

282. See *supra* note 138 and accompanying text (discussing the ability of employers to decide whether to allow companion animals at all).

283. See *infra* notes 284–89 and accompanying text (discussing ineffectiveness of breed-discriminatory legislation).

284. Huss, *Conundrum*, *supra* note 68, at 1571–72 (listing some of the national animal advocacy and other organizations opposing this type of legislation and providing language of policies).

285. *Id.*

286. *Why Breed-Specific Legislation Is Not the Answer*, AM. VETERINARY MED. ASS'N, <https://bit.ly/2deqUVH> [<https://perma.cc/FU8C-XGZ4>].

287. *About the ABA*, AM. BAR ASS'N, <https://bit.ly/2SKntF0> [<https://perma.cc/9M47-5A3L>] (stating the organization is “one of the world’s largest voluntary professional organizations with over 400,000 members”); AM. BAR ASS'N, RESOLUTION AND REPORT (2012), <https://bit.ly/2SLAf6m> [<https://perma.cc/6ZS5-WXRM>].

288. Victoria L. Voith et al., *Comparison of Adoption Agency Breed Identification and DNA Breed Identification of Dogs*, 12 J. APPLIED ANIMAL WELFARE SCI. 253, 261 (2009) (comparing breed identification by adopting agencies with DNA results). Studies of people with daily contact with a variety of breeds of dogs have illustrated that visual identification of dogs is frequently inaccurate. Victoria L. Voith et al., *Comparison of Visual and DNA Breed Identification of Dogs and Inter-Observer Reliability*, 3 AM. J. SOC. RES. 17, 18, 24 (2013) (determining there was a “wide disparity between DNA and visual identification of the predominant breeds comprising a dog”).

289. Huss, *Conundrum*, *supra* note 68, at 1573–74 (discussing laws in 19 states). At the time of the writing of this Article, the number of states with similar laws has increased to 21. *Anti-Breed-Specific Legislation by State*, BEST FRIENDS ANIMAL SOC'Y, <https://bit.ly/2SINmVV> [<https://perma.cc/G76E-GEXN>] (listing states and providing the language of the provisions).

a law that restricts the breed allowed in a jurisdiction, employers should follow these states' leadership and adopt a breed-neutral policy.²⁹⁰

c. Size or Weight Restrictions

Both the DOJ guidance on service animals under Titles II and III of the ADA and the HUD guidance on the FHA prohibit the exclusion of an animal based solely on the size or weight of the animal.²⁹¹ In revising the definition of service animal, the DOJ concluded that because "large dogs have always served as service animals, continuing their use should not constitute fundamental alterations or impose undue burdens."²⁹²

Although employers could restrict the size or weight of companion animals on the premise of mitigating risks, it would be more effective for employers to consider the behavior of the individual animal.²⁹³ A potential solution is to require minimum levels of behavior or training for each of the companion animals allowed at the workplace.²⁹⁴

290. See Huss, *Conundrum*, *supra* note 68, at 1573 (stating that some local jurisdictions continue to have breed-discriminatory legislation).

291. Title II Regulation Guidance, *supra* note 132, at 81; Title III Regulation Guidance, *supra* note 132, at 86–87; HUD FHEO NOTICE, *supra* note 63, at 3 ("Breed, size, and weight limitations may not be applied to an assistance animal."). The DOJ guidance articulated that the "vast majority of commentators" to the proposed service animal rules "did not support a size or weight limitation." Title II Regulation Guidance, *supra* note 132, at 80; Title III Regulation Guidance, *supra* note 132, at 86.

Commenters were typically opposed to a size or weight limit because many tasks performed by service animals require large, strong dogs. . . . Small animals may not be suitable for large adults. The weight of the service animal user is often correlated with the size and weight of the service animal.

Title II Regulation Guidance, *supra* note 132, at 80; Title III Regulation Guidance, *supra* note 132, at 86. The DOJ considered concerns expressed in favor of size and weight limitations such as "a larger animal may be less able to fit in various areas with its handler . . . and that larger animals are more difficult to control." Title II Regulation Guidance, *supra* note 132, at 81; Title III Regulation Guidance, *supra* note 132, at 86.

292. Title II Regulation Guidance, *supra* note 132, at 56, 194; Title III Regulation Guidance, *supra* note 132, at 56, 268.

293. This also allows employers to be consistent with how some federal agencies have dealt with the issue of service and assistance animals. See *supra* note 291 and accompanying text (discussing how the DOJ and HUD deal with issues of size and weight of animals).

294. See *infra* note 297 and accompanying text (discussing training for animals incorporated in the workplace).

3. *Training for Animals*

As discussed above, because ADA Title I requires only reasonable accommodation, employers may exclude a service animal who is a direct threat to others.²⁹⁵ Even if a service animal is trained, there is no guarantee the animal will never injure a person.²⁹⁶ Companion animals could be required to undergo basic training and continue to exhibit behavior indicating the animal is appropriately socialized for the setting and under the control of the employee.²⁹⁷

4. *Health Standards*

The best way to reduce the likelihood of zoonotic disease transmission is to require any animals on the premises to be regularly screened for diseases and parasites that may be harmful to humans and other animals.²⁹⁸ The standards used by therapy dog certification programs, including animals participating in visitation at healthcare facilities, could be used as an example of the highest standards to prevent disease transmission; although given the likelihood of minimized contact, some of these requirements may be unnecessary.²⁹⁹ Alternatively, a workplace could adopt the standards

295. See *supra* notes 124–37 and accompanying text (discussing ADA Title I process and undue hardship analysis).

296. See, e.g., *Chaffin v. Wall*, No. B221151, 2010 WL 4886290, at *1 (Cal. Ct. App. Dec. 27, 2010) (describing an incident where a service dog bit a child on the head after being startled by the child who was visiting the home and poked “the dog from behind with a brush”). Dogs certified for therapy work also may cause injuries. See *Bermudez v. Hanan*, No. 38/12, 2013 WL 5496124, at *2–3 (N.Y. Civ. Ct. Sept. 13, 2013) (discussing case of a dog “certified to visit healthcare facilities as part of a therapy dog team” who caused injuries requiring medical treatment to a guest at a social gathering). The *Bermudez* court, citing to the dog’s work as a therapy dog, found the claimant did not demonstrate the owner of the dog either knew or should have known of any vicious propensities of the dog. *Id.* at *12; see also *Parvini v. City of Chicago*, No. 1-16-3329, 2017 WL 6722819, at *1–6 (Ill. App. Ct. Dec. 27, 2017) (affirming City of Chicago Department of Administrative Hearings’s finding that a dog was a dangerous animal, notwithstanding the dog’s certification from Therapy Dogs International, after reports of two incidents with other dogs in the building).

297. PALIKA & FEARING, *supra* note 164, at 61, 110–14 (discussing the appropriate level of socialization and training for dogs allowed at work). Although a discussion of ethical issues is beyond the scope of this Article, concerns about whether animals are trained (or controlled) in a humane manner should be of concern to employers and employees. Huss, *Hounds at the Hospital*, *supra* note 180, at 55–56 (discussing issues relating to training of service animals and animals involved in animal-assisted interventions).

298. Murthy et al., *supra* note 275, at 506 (setting out recommendations for health screenings of animals).

299. Huss, *Hounds at the Hospital*, *supra* note 180, at 105–08 (discussing health standards for visiting animals in health care facilities).

set forth for animals participating in other types of visitation programs that allow for more direct contact of the animals and focus on the vaccinations and medical testing generally viewed as necessary to keep companion animals living in the community healthy.³⁰⁰

The extent to which human diseases can be attributed to parasites associated with companion animals varies significantly by geographic location.³⁰¹ Risks of zoonotic pathogen transmission are low, especially if the animals are receiving suitable veterinary care for the animal and region, including testing for parasitic infections and, if appropriate, anti-parasitic treatment.³⁰² While experts on preventing transmission of certain pathogens recommend special testing if an animal has been connected to an outbreak of infectious disease, “[r]outine screening for specific, potentially zoonotic microorganisms . . . is not recommended” even for animals allowed in healthcare facilities.³⁰³

An animal exhibiting symptoms of a medical condition, such as vomiting or a zoonotic infection, should be excluded from a workplace.³⁰⁴ Because management of a flea infestation can be challenging, animals in the workplace should be regularly checked for fleas and be on parasite control suitable for each animal and the environment.³⁰⁵ Confirming animals have up-to-date vaccinations, consistent with local requirements, also is effective in reducing the likelihood of the spread of disease to humans or from animal to animal.³⁰⁶

300. ANNUAL HEALTH RECORDS FORM, THERAPY DOGS INT’L, <https://bit.ly/2BkfcR5> [<https://perma.cc/U9JS-WWPS>].

301. Weese, *Parasitic Diseases*, *supra* note 176, at 3.

302. *Id.* at 11, 39–40 (discussing the low risk of transmission of an infection caused by mites if animals are on antiparasitic prophylaxis and there is a regular fecal examination to monitor worm burdens).

303. Murthy et al., *supra* note 275, at 506 (listing organisms including group A streptococci, *Clostridium difficile*, VRE, and MRSA as examples of these types of organisms).

304. *Id.* (recommending exclusion of animals with symptoms from health care facilities). For example, because veterinarians recommend that animals undergoing ringworm treatment are “confined to a single room without carpeting to facilitate containment of . . . transmission and [] environmental cleaning,” any animal diagnosed with ringworm should be excluded from the premises until after the animal has been cleared of the infection by a veterinarian. Weese & Fulford, *Fungal Diseases*, *supra* note 184, at 281.

305. Weese, *Parasitic Diseases*, *supra* note 176, at 28–30. Because of the toxic nature of some anti-flea products, care should be taken not to require a treatment protocol that may be damaging to humans or animals. *Id.* (discussing management of fleas).

306. Weese & Fulford, *Viral Diseases*, *supra* note 181, at 259, 265 (discussing vaccination of companion animals for rabies and that it is very rare for a properly vaccinated dog or cat to be diagnosed with rabies); *see also* CDC, *Rabies*, *supra*

Even if all the animals are perfectly healthy and well-behaved, ultimately human behavior will determine whether a positive environment will exist for the animals and employees.³⁰⁷ The next section of this Article discusses select issues that focus on human-animal interaction.³⁰⁸

B. Issues with Humans

1. Managing Interactions with Animals: Training for the Humans

An employer should determine the extent to which employees' animals may interact with other employees or members of the public.³⁰⁹ Training the humans in the workplace can reduce the risk of conflicts as well as injuries.³¹⁰ For example, reasonable hygienic principles, such as employees washing their hands after interacting with animals, can be an effective way to limit transmission of pathogens.³¹¹

General service-animal etiquette calls for people to have essentially no interaction with a service animal on duty unless the individual partnered with the service animal makes a request.³¹² Because service animals need to be able to focus on their handlers or the tasks they have been trained to do for their handlers, it is important not to distract the animals.³¹³ Ignoring the service animal is not considered being rude and, although it is perhaps ob-

note 181 ("Modern day prophylaxis has proved nearly 100 percent successful [in preventing rabies]."). Weese and Fulford recommend the vaccination of cats as well as dogs. Weese & Fulford, *Viral Diseases*, *supra* note 181, at 265.

307. *Infra* notes 307–54 and accompanying text (discussing issues related to mitigating concerns that pertain to humans and their behavior).

308. *Infra* notes 307–54 and accompanying text (discussing activities under the control of employers and employees).

309. *Infra* notes 310–21 and accompanying text (discussing interaction with animals).

310. *Infra* notes 310–21 and accompanying text (discussing training of humans).

311. Goldstein & Abrahamian, *supra* note 180, at 141 (discussing the role of good hand washing to limit the spread of salmonellosis); van Knapen & Overgaauw, *supra* note 174, at 578–79 (discussing the prudence of humans washing their hands after handling animals, especially before eating).

312. *Service Animal Etiquette*, ANYTHING PAWSABLE [hereinafter ANYTHING PAWSABLE], <https://bit.ly/2SKzs5D> [<https://perma.cc/XU75-T9JJ>]; *What to Do if You Encounter a Service Dog Team*, PLEASE DON'T PET ME [hereinafter PLEASE DON'T PET ME] (on file with author).

313. ANYTHING PAWSABLE, *supra* note 312; PLEASE DON'T PET ME, *supra* note 312. Distraction includes calling to or making other sounds at a dog, petting the dog, or offering food to a dog. PLEASE DON'T PET ME, *supra* note 312.

vious, people should respect the service animal's space.³¹⁴ Considering that the default interaction with service animals is no physical contact, the risk of injury from service animals in the workplace should be minimal.³¹⁵ Because repeated workplace harassment affecting a term, condition, or privilege of employment can support an ADA claim for disability-based workplace harassment, employers should also take steps to educate employees on the rights of individuals to have service dogs in the workplace

An employer allowing animals in the workplace could require all people interacting with the animals to have been provided at least minimal information addressing injury prevention.³¹⁶ From the perspective of avoiding bites, employees should be instructed not to bring sick or injured animals to the premises, as they are more likely to bite.³¹⁷ Employers should also instruct employees to avoid other higher risk situations, including when a dog is not with his or her owner or the owner does not give permission to pet the dog.³¹⁸ Reaching over a barrier to pet a dog can also increase the risk of injury.³¹⁹ Dogs who are sleeping or eating should not be disturbed.³²⁰ Because "[m]ost people do not understand dog body language," everyone who may have interaction with animals should be instructed in basic principles of animals' body language as part of a regular training process.³²¹

314. ANYTHING PAWSABLE, *supra* note 312. Some commentators recommend offering help if it appears a service-animal handler may need it but emphasize the need to respect the handler's wishes. PLEASE DON'T PET ME, *supra* note 312.

315. ANYTHING PAWSABLE, *supra* note 312 (recommending people should not pet a service animal).

316. *Dog Bite Prevention*, AM. VETERINARY MED. ASS'N [hereinafter AVMA, *Dog Bite Prevention*], <https://bit.ly/1IZvdOI> [<https://perma.cc/4WXR-N4BH>] (discussing basic dog-bite prevention issues).

317. *Id.* Mother dogs can also be protective of puppies. *Id.*

318. *Id.* The Humane Society of the United States recommends that, even if it is your own dog, you do not pet a dog "without letting them see and sniff you first"). *How to Avoid a Dog Bite*, HUMANE SOC'Y U.S. [hereinafter *How to Avoid a Dog Bite*], <https://bit.ly/1pz4SYv> [<https://perma.cc/5PTC-5DCE>] (discussing dog bite prevention).

319. AVMA, *Dog Bite Prevention*, *supra* note 316.

320. *Id.*

321. Miller, *supra* note 266 (citing to E'Lise Christensen, a board-certified veterinary behaviorist who also recommends training for workplaces that allow animals); *How to Avoid a Dog Bite*, *supra* note 318 (providing examples of dog body language that may signal a dog is uncomfortable, including a tensed body, furrowed brow, stiff tail, or intense stare). Other body language of concern is if a dog's eyes roll so the whites are visible or the dog yawns, which can be a sign of stress. Essentially any body language that illustrates a dog is stressed, nervous, or experiencing fear should be a concern if observed. See Victoria Stillwell, *Canine Body Language*, POSITIVELY, <https://bit.ly/1Oklpfk> [<https://perma.cc/KFV9-AUV8>] (providing a list of behaviors indicating nervousness or stress in dogs). Cats also

Employers should create a protocol to address what happens if there is an on-site injury.³²² Obviously, any wounds from bites or scratches should be immediately washed with warm, soapy water.³²³ Depending on the extent of the injury, professional medical attention may be warranted—and the workplace should have a process for anyone interacting with animals to obtain appropriate healthcare.³²⁴

The safest interaction with another person's companion animal is no physical interaction at all. However, given that one of the perceived benefits of having animals at work is the promotion of interaction among humans, it is likely unrealistic to prevent all contact, and it may even be counterproductive to do so.³²⁵ Before employees and animals interact, adequate notice indicating the likely response of the animal should be put into place throughout the workplace.³²⁶

2. *Considerations of the Physical Workspace*

Employers who do not own their own buildings are subject to leases, many of which include “no-pet” clauses.³²⁷ For some workplaces, it might only be appropriate to allow for animals if an individual has his or her own private office space or the animal can be confined in some manner.³²⁸ Employees should be responsible for

have body language indicating stress or aggression. Ramona A. Marek, *Understanding Your Cat's Body Language*, ANIMAL WELLNESS MAG. (Apr. 17, 2014), <https://bit.ly/2QuuMUY> [<https://perma.cc/MQW3-NKES>].

322. CDC, *Preventing Dog Bites*, *supra* note 189 (discussing what to do if bitten or attacked by a dog); Cats, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter CDC, *Cats*], <https://bit.ly/2hw8Tkv> [<https://perma.cc/TBL9-QRVH>] (discussing what to do if bitten or scratched by a cat).

323. CDC, *Preventing Dog Bites*, *supra* note 189; CDC, *Cats*, *supra* note 322.

324. CDC, *Preventing Dog Bites*, *supra* note 189 (discussing when medical attention is warranted); CDC, *Cats*, *supra* note 322 (setting forth when medical attention is warranted). Because all animals on the premises should have veterinary records on file, there should not be any risk of rabies. *See supra* note 306 and accompanying text (discussing vaccinations and rabies).

325. Cf. Stephen M. Colarelli et al., *A Companion Dog Increases Prosocial Behavior in Work Groups*, 30 ANTHROZOÖS 77, 81, 85 (2017) (reporting on study rating behavior in groups with dogs as more cooperative and as indicating more interpersonal trust).

326. *E.g.*, PALIKA & FEARING, *supra* note 164 at 157, 165 (stating a sign should be posted and providing an example of such a sign).

327. Noguchi, *supra* note 266 (discussing no-pet policies in buildings).

328. *E.g.*, STETSON UNIV., GUIDELINES FOR ANIMALS ON CAMPUS—GULFPORT (2017), <https://bit.ly/2EtKYUE> [<https://perma.cc/ZE8E-9XZW>] (providing only faculty and staff with private offices are eligible to bring their companion animals to campus); *see also* PALIKA & FEARING, *supra* note 164, at 30 (generally recommending animals do not have the “run of the office”).

“pet proofing” their space.³²⁹ Both employers and employees should ensure there is reasonably easy accessibility to appropriate outdoor space to allow dogs to be toileted and exercised on a regular basis.³³⁰

Employers concerned about animals—or anything relating to animals’ presence at the location—causing a trip hazard should take steps to require employees to manage the animal and environment in a way that minimizes this possibility.³³¹ For example, employees should be responsible for ensuring that water dishes and toys remain outside of common areas.³³²

As discussed above, employers may be required to consider the needs of employees utilizing service animals and employees who may have an allergic reaction to such animals.³³³ Although certain coat types in dogs seem to trigger fewer allergies in some people, there is “no such thing as a hypoallergenic dog.”³³⁴ Employers may address concerns about allergies by installing air purifiers and vent

329. Jennifer Lonoff Schiff, *14 Rules for Creating a Bring-Your-Dog-to-Work Policy*, CIO (Nov. 2, 2015), <https://bit.ly/2GaBbQe> [<https://perma.cc/XXG7-LE6E>] (reporting on ways to ensure an office environment is safe for companion animals, including preventing issues such as animals chewing on cords).

330. PALIKA & FEARING, *supra* note 164, at 30 (discussing the need for appropriate outdoor space).

331. *Baker v. Dupnik*, Nos. CV 09-0015-TUC-HCE, CV 09-0273-TUC-HCE, 2011 WL 13183250, at *13–14 (D. Ariz. Mar. 31, 2011) (raising concern over a large service dog being a trip hazard in the work environment); Schiff, *supra* note 329 (reporting on a company that has cats and smaller dogs wear a bell on their collar to ensure the environment is safe for the animal, but it similarly would provide notice to humans of the animals’ presence).

332. Stevens et al., *supra* note 203, at 70–72 (discussing risk of falls because of pet items). Pet-friendly workplaces may offer benefits such as food and water dishes, toys, and treats. BANFIELD, *supra* note 21, at 3.

333. *Supra* notes 114–23 and accompanying text (discussing issues of allergies relating to service animals).

334. James Cave, *Sorry, There’s No Such Thing as a Hypoallergenic Dog Breed*, LIFE (Nov. 28, 2018), <https://bit.ly/2zXkh25> [<https://perma.cc/QFC7-V6D5>]; see also James T C Li, *Pet Allergy: Are There Hypoallergenic Dog Breeds*, MAYO CLINIC (Oct. 14, 2016), <https://mayoclinic.in/2LfECXI> [<https://perma.cc/4XTX-83XG>] (stating “some individual dogs may cause fewer allergy symptoms than others” but there is “no such thing as a hypoallergenic dog breed”); Doris W. Vredegoor et al., *Can f 1 Levels in Hair and Homes of Different Dog Breeds: Lack of Evidence to Describe Any Dog Breed as Hypoallergenic*, 130 J. ALLERGY CLINICAL IMMUNOLOGY 904, 908 (2012) (“[T]he term ‘hypoallergenic’ is a misnomer that is not evidence based and should not be applied to dog breeds on the basis of current scientific evidence.”). The source of animal allergies is often a protein that sticks to the dander from a dog, not the fur of the dog itself. Li, *supra* note 334. A breed of dog who sheds very little or does not shed may be marketed as hypoallergenic because less dander is released, and, therefore, less fur is shed—and the dander sticks to the fur. *Id.* Note, at least one employer has offered to allow an employee to bring a hypoallergenic dog to the workplace. See *Maubach v. City of Fairfax*, No. 1:17-cv-921, 2018 WL 2018552, at *4 (E.D. Va. Apr. 30, 2018). The employee

filters.³³⁵ Hard flooring can hold less allergy-producing dander than carpeting and should be cleaned frequently.³³⁶ Employees with allergies should avoid direct contact with any animals, and employees with animals should be respectful of allergic employees' space.³³⁷ If an employer allows for companion animals in the workplace, the employer can require that such animals be regularly bathed to remove dander from their coats.³³⁸

3. *Other Conflicts Among Employees*

Though allergies are often cited as a cause for conflicts, other disagreements may arise among employees if companion animals are allowed in the workplace.³³⁹ Some employees may find animals a distraction or just prefer not to have them on the premises.³⁴⁰ Other employees may fear the animals.³⁴¹ Certainly, animals who have caused injuries can also cause conflicts if they are allowed to return to the premises.³⁴² A policy can set forth the ramifications if any animal causes a problem or injury, including the banning of the animal from the premises for actions such as an unprovoked bite.³⁴³

in this case rejected that alternative accommodation, reiterating "there is no such thing as a hypoallergenic dog." *Id.*

335. *Cf. Bonnette v. Shinseki*, 907 F. Supp. 2d 54, 66 (D.D.C. 2012) (referencing the Department of Veteran's Affairs provision of a special air filter to remove a service dog's dander to ensure that the individual utilizing a service animal and colleagues with allergies could be in the same office); *see also Cave, supra* note 334 (discussing ways to alleviate symptoms of allergies).

336. *Cf. Bonnette*, 907 F. Supp. 2d at 66 (referencing the Department of Veteran's Affairs arranging more frequent vacuuming of an office); *Cave, supra* note 334 (recommending hard floors or frequent vacuuming and shampooing of carpet).

337. *See Cave, supra* note 334 (recommending not allowing an animal to lick you in the event an allergy is triggered by animal saliva).

338. *See Li, supra* note 334 (recommending bathing animals once a week if allergies are an issue). *But see Ahluwalia et al., supra* note 169, at 10–11 (acknowledging washing dogs reduced allergen levels, but stating "the results were short-lived unless the dogs [were] washed twice a week," citing to studies showing a limited effect of washing cats as well as raising the difficulty in maintaining the regular washing of animals, especially cats).

339. *See infra* notes 340–43 and accompanying text (setting forth some other conflicts).

340. *See PALIKA & FEARING, supra* note 164, at 38–39 (discussing other reasons some people do not want dogs at the workplace).

341. *Id.* at 37–38 (discussing some people's fear of dogs and the need to be respectful of the space of others).

342. *See Tim Molloy, Inside the "NCIS" Mess: How a Dog Bite Kept Pauley Perrette and Mark Harmon Apart on Set*, MSN (May 17, 2018), <https://bit.ly/2CbgO1q> [<https://perma.cc/B4AN-5S85>] (reporting on rumors that a crew member was bitten by one actor's dog and that another actor objected to the return of the dog to the set of a television series).

343. *See Roepe, supra* note 21 (discussing complaint process if there are problems).

4. *Confirm and Clarify Who Is Responsible for the Animals*

a. *Clear Ownership of Animals*

It is important to determine the legal ownership of any animals at the workplace.³⁴⁴ Businesses should be cautious about “informal” arrangements where employees care for stray animals on the premises.³⁴⁵ In contrast, as discussed above, an organized program allowing for a community cat colony or, as discussed below, a company fostering shelter animals can be beneficial for the business, employees, and animals.³⁴⁶ These programs allow for shelter animals to be promoted in the community, which allows for animals to be accessible to prospective adopters, provides employees with some of the benefits of having companion animals in their lives without a financial commitment, and gives animals a break from the restrictive nature of most shelters.³⁴⁷

The owner of any companion animal on the premises should be required to agree to a written policy setting forth the requirements implemented by the employer and provide any necessary paperwork supporting the animal’s health status.³⁴⁸ The care for any animal should be the responsibility of the employee bringing the animal to the workplace, both so the animal does not distract other employees and because walking dogs or chasing animals can lead to falls.³⁴⁹

b. *Insurance and Indemnification*

Because of the possibility of liability, employers are encouraged to ensure that there is adequate insurance coverage in the

344. See generally *Allstate Indem. Co. v. Oetter*, No. 4:14-cv-00090-BR, 2015 WL 12600170 (E.D.N.C. June 9, 2015) (analyzing insurance coverage issue for incident involving an employee bitten by a dog in a parking lot).

345. *Id.* at *1. The dog in this case had been staying on the premises for “several months, having wandered there and apparently was a stray.” *Id.* Several employees of the business cared for the dog, including taking him to the veterinarian. *Id.* But see *infra* note 363 and accompanying text (discussing companies fostering animals on their premises).

346. See *supra* note 276 (discussing community cats and their management); *infra* note 363 and accompanying text (discussing fostering programs).

347. See Rebecca Brumfield, “CAT” Pilot Program Fosters Kitties in Local Businesses, CIPROUD.COM (Apr. 5, 2018), <https://bit.ly/2CcfT0F> [<https://cbsn.ws/2Ei5Atn>] (describing program where businesses in central Illinois foster cats); Steve Hartman, “Cat Library” Offers Purrfect Solution to Stress, CBS NEWS (June 5, 2015), <https://cbsn.ws/2Ei5Atn> [<https://perma.cc/GK56-H9T9>] (describing county office in New Mexico where cats from the shelter are fostered).

348. See *supra* notes 298–306 and accompanying text (discussing minimal health requirements).

349. See Stevens et al., *supra* note 203, at 72 (discussing fall injuries).

event of any injury.³⁵⁰ Alternatively, employees can be required to provide documentation showing their personal liability insurance covers damages arising from incidents with the dog or to execute an indemnification agreement protecting the employer from personal or property damage.³⁵¹ Coverage can be complicated if an employee's general homeowner's policy includes an exclusion for injuries arising out of business engaged in by the insured.³⁵² In contrast, a business's premises liability insurance policy might only cover incidents if the animals are on the premises for a business purpose.³⁵³ The distinction between a personal and business purpose can be complicated if there are benefits to the business.³⁵⁴

350. See PALIKA & FEARING, *supra* note 164, at 31 (recommending companies that allow dogs in the workplace review their general liability insurance coverage, and stating that “adding dogs to the workplace presents no additional risk requiring increased premium payments . . . [but] [s]ome insurance companies may suggest specific rules or policies that should be implemented”); Whit Richardson, *Dogs in the Workplace: What Every Business Owner Needs to Know*, BANGOR DAILY NEWS (Sept. 21, 2012), <https://bit.ly/2Gdnf8f> [<https://perma.cc/9W4K-T67C>] (discussing insurance coverage and citing to source stating that “[m]ost insurance companies will cover dogs in the workplace, both from a business owner’s commercial insurance and a pet owner’s homeowner’s insurance . . . [but business owners] should make sure their insurance can cover any liability associated with dogs in the office”).

351. See Chas Rampenthal, *But Is It Legal? Dogs in the Office*, INC. (Aug. 16, 2012), <https://bit.ly/2LdJGc9> [<https://perma.cc/A8JU-LVH6>].

352. See, e.g., *Allstate Indem. Co. v. Oetter*, No. 4:14-cv-00090-BR, 2015 WL 12600170, at *2–5 (E.D.N.C. June 9, 2015) (analyzing exclusion language in an employee’s insurance policy in a case where a dog bit a co-worker on the employer’s premises). In *Allstate*, the court found the insured and the co-worker were on the premises because they were working and, because the “injuries resulting from the dog bite were linked to, associated with, and connected to [the insured’s] work,” the business exclusion would apply. *Id.* at *4. See also *Grams v. IMT Ins. Co.*, No. 13-0434, 2014 WL 467895, at *2 (Iowa Ct. App. Feb. 5, 2014) (affirming summary judgment in favor of insurance company where a “business exclusion” precluded coverage when a dog bit a child at a home daycare center, finding the injury was associated with the business); *Phila. Indem. Ins. Co. v. Fire Ins. Exch.*, No. B205732, 2009 WL 2036198, at *8 (Cal. Ct. App. July 15, 2009) (applying business purposes exclusion when dog bit client during therapy session); *S.C. Farm Bureau Mut. Ins. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.*, 554 S.E.2d 870, 874 (S.C. Ct. App. 2001) (finding homeowners policy exclusion was not applicable when a family pet bit a child on the business premises).

353. *Hartford Cas. Ins. Co. v. Litchfield Mut. Fire Ins. Co.*, 835 A.2d 91, 100 (Conn. App. Ct. 2003) (discussing reason dog was on the premises of the insured).

354. *Id.* (analyzing the evidence presented to determine whether an animal was a pet dog or had a commercial purpose). In this case, there was testimony the dog was at the premises “because customers liked the dog” and the “dog’s presence [was viewed] as a benefit to the business”). *Id.* A picture of the dog was used on a promotional sign as well. *Id.* See also *Hartford Cas. Ins. Co. v. Litchfield Mut. Fire Ins. Co.*, 876 A.2d 1139, 1146–47 (Conn. 2005) (confirming defendant insurer’s obligation to defend based on the employee’s status as an insured).

CONCLUSION

An animal-friendly workplace is not appropriate for every company, and being at work is not appropriate for every animal.³⁵⁵ However, employers should be proactive in considering ways to make their premises animal-friendly given the possibility an employee may request he or she be allowed to bring a service animal as an accommodation under laws protecting people with disabilities from discrimination.³⁵⁶ Employers should consider the risks of incorporating companion animals in a workplace environment and weigh them against the benefits.³⁵⁷ Nine out of ten human resources decision-makers in the Banfield Survey agreed that “both employees and executives view the policies positively.”³⁵⁸ If a company decides to allow companion animals in the workplace, in order to reduce the potential for liability, a formal written policy should be adopted and enforced.³⁵⁹ While sample policies exist, workplaces should customize any policy to fit its own circumstances and those of its employees.³⁶⁰

Even if an employer determines the time is not right to allow companion animals on an ongoing basis, it can support its employees with companion animals in other ways.³⁶¹ It could allow animals for limited days or times, including the annual Take Your Dog to Work Day®, which has been expanded to Take Your Pet to

355. See *supra* notes 164–270 (analyzing concerns of employees and whether it is in the best interest of an animal to be at work).

356. *Supra* notes 35–137 and accompanying text (discussing the ADA and accommodation process).

357. *Supra* notes 140–254 and accompanying text (discussing research showing benefits and concerns raised by employers).

358. *Id.* Human resources decision-makers at pet-friendly workplaces take advantage of the policies more often than employees. *Id.* at 4.

359. In the Banfield Survey, about half of human resources decision-makers were concerned it would be difficult to institute such a policy. BANFIELD, *supra* note 21, at 3. However, that same survey reported that three-quarters of human resources decision-makers at companies who already implemented such a policy report it “was not difficult” and, even at companies without such a policy, “believe they could implement a new pet-friendly workplace policy in less than a year.” *Id.*

360. See, e.g., BETTER CITIES FOR PETS, PETS WORK AT WORK TOOLKIT, <https://bit.ly/2SMY5hV> [<https://perma.cc/3P68-PF9D>] (outlining a sample policy); Zoe Conrad, *Tips on Creating a Dog-Friendly Workplace*, BARK (June 2012), <https://bit.ly/2PZdXQN> [<https://perma.cc/BTC7-H99D>] (listing tips for employers writing pet policies); PET SITTERS INT’L, SAMPLE: DOGS AT WORK POLICY, <https://bit.ly/2S0bpzG> [<https://perma.cc/T5NH-PBEF>] (describing guidelines for developing a dog policy); STETSON UNIV., *supra* note 328 (listing guidelines for bringing animals onto University campus).

361. *Infra* notes 362–65 and accompanying text (discussing other ways to provide employees who have companion animals with benefits).

Work Week®.³⁶² An employer could work with a local shelter to foster animals.³⁶³ If a workplace is just not suitable for companion animals, then the employer could consider offering pet insurance as an employment benefit. The Banfield Survey found that a sizable percentage of employees, regardless of whether their workplace allowed animals, wished pet insurance was offered as a benefit.³⁶⁴ Other companies offer discounts for dog day care, bereavement leave when a companion animal dies, financial assistance for pet adoptions, or assistance caring for animals if an employee needs to travel.³⁶⁵

Employers that are thoughtful and considerate about adopting policies allowing animals in the workplace may increase their bottom lines by retaining less-stressed employees and improve the lives of both their employees and their employees' animals.³⁶⁶

362. E.g., *Your Dog to Work Day® History & FAQs*, PET SITTERS INT'L, <https://bit.ly/22rh54U> [<https://perma.cc/3ESP-GK6X>] (describing annual event encouraging employers to allow dogs in the workplace).

363. Brumfield, *supra* note 347; Hartman, *supra* note 347.

364. BANFIELD, *supra* note 21, at 3 (reporting 23 percent of employees at pet-friendly companies and 38 percent at non-pet-friendly companies would like such a benefit). Pet insurance is essentially health insurance for pets. See Susan Jenks, *Pet Insurance Is the Latest Work Perk*, N.Y. TIMES (June 7, 2017), <https://nyti.ms/2rXNTJw> [<https://perma.cc/CKB4-8LUV>] (discussing employer-sponsored benefit plans).

365. See *Some Companies Letting Employees Take Time Off After Pet Dies*, CBS NEWS (Mar. 14, 2016), <https://cbsn.ws/2GgpiIJ> [<https://perma.cc/DFE4-JWUR>] (discussing national companies with pet bereavement policies); Kokalitcheva, *supra* note 16 (describing array of benefits); Gloria Tso, *Does Your Company Have "Paw-Ternity" Leave? Companies Offer Perks for Pet Owners*, GOOD MORNING AM. (Aug. 23, 2018), <https://abcn.ws/2LkatCd> [<https://perma.cc/NHY7-PQGS>] (setting forth types of benefits including paid leave to care for a companion animal).

366. *Supra* notes 143–60 and accompanying text (discussing the role of workplace stress and the studies that support that under certain conditions, a pet-friendly environment may decrease stress and result in other positive benefits while increased stress can increase costs to employers). PALIKA & FEARING, *supra* note 164, at 40–52 (describing the process of establishing an animal-friendly workplace). In addition, adopting an animal-friendly policy may even increase the adoption of animals. BANFIELD, *supra* note 21, at 3 (reporting 22 percent of non-pet owners would consider getting a pet if their employer would allow pets at the workplace and 39 percent of current pet owners “would consider getting an additional pet”).